

## ARCHITECT AGREEMENT

### CM/GC PROJECT DELIVERY

**THIS ARCHITECT AGREEMENT** (“Agreement”) is made and entered into as of the **15<sup>th</sup> day of April, 2019**, and is by and between Douglas County School District RE-1 (“Owner”), and **Cunningham Group Architecture, Inc. for Architect/Engineer (A/E) Services**, an association of person(s) duly licensed under the laws of the State of Colorado to practice the profession of architecture, doing business as a professional corporation (“Architect”).

### RECITALS

The Owner contemplates the design and construction of the project, which shall be generally defined as follows: **Douglas County School District Alternative High School** (hereinafter referred to as the “Project”).

The Owner intends to use a [hard bid / Construction Manager / General Contractor (“CM/GC”)] delivery method for the Project. The term “Contractor” as used herein shall refer to Owner’s contractor or construction manager / general contractor (CM/GC), whichever is applicable.

The phrase, “approved budget,” as used herein shall be deemed to mean the final budget figure established and approved by the Owner either before or after the conclusion of the Schematic Design phase, Design Development phase, and Construction Documents phase. Said “approved budget” shall not include equipment or furniture purchased by the Owner or other costs to the Owner such as Architect’s fees, engineers’ fees, and the cost of surveys, soil investigations and other tests made at the Owner’s expense.

The Owner’s approved construction-only budget for this Project is **Eight Million Dollars (\$8,000,000)**. This approved budget shall be reviewed with the Owner at the conclusion of the Schematic Design phase, Design Development phase, and Construction Documents phase.

Capitalized terms used but not defined in this Agreement have the meanings assigned to them in the General Contract Conditions (“General Contract Conditions”). The General Contract Conditions may be further amended or supplemented from time to time.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated by this reference, and their mutual covenants as set forth herein, the Owner and Architect agree as follows:

## **ARTICLE 1 ARCHITECT'S RESPONSIBILITIES**

### **1.01 RESPONSIBILITY OF ARCHITECT TO OWNER**

**1.01.01** The Architect covenants with the Owner to furnish its professional skill and judgment, pursuant to the specific standards of the profession of architecture for the design and construction of school buildings, support facilities, and building systems or services, and to cooperate with the Owner in furthering the Owner's best interests.

**1.01.02** The Architect agrees to furnish efficient administration and supervision of the Project Services and to perform all duties in the manner consistent with the interests of the Owner and consistent with the standards established in Subsection 1.01.01 above. The Architect shall have an exclusive and undivided duty of loyalty to the interests of the Owner.

**1.01.03** The Architect's responsibility and obligation hereunder is in addition to and not in lieu of other obligations to and remedies available to the Owner.

### **1.02 BASIC SERVICES**

The Architect agrees to perform all the professional services incident to design, preparation of the necessary plans and specifications for the construction of the Project, securing and evaluating (as applicable) bids, general accounting services customarily performed for and administration of the construction contract, processing of change orders, and general and technical supervision and inspection of the work (as defined in Section A.5.7) (collectively the "Services"). Without limiting the generality of the foregoing, the Services shall include but not be limited to the professional services described in Exhibit A attached hereto and made a part hereof.

### **1.03 SUB-CONSULTANT**

The Architect shall furnish all structural, mechanical, electrical, plumbing, building envelope, acoustical, interior, civil, including drainage study, landscaping, technology infrastructure, fire protection, irrigation, food service/kitchen consulting, LEED or CO-CHPS consulting, and other architectural and engineering design, and inspection services required in connection with the Project and shall be responsible to the Owner for the employment of properly trained, qualified and competent engineers and consultants in such regard, who shall be acceptable to and approved by the Owner. Before designating the engineers or consultants to perform such services, the Architect shall discuss the same with the Owner and thereafter shall give the Owner, in writing, the names of the engineers or consultants recommended. The Owner reserves the right to disapprove of any engineer or consultant proposed by notifying the Architect of such fact within ten (10) days after submission of the information required herein. In the case of each engineer or consultant, prior to approval by the Owner, the Architect shall notify the Owner in writing that a satisfactory fee arrangement has been reached between them. All such engineers or consultants, for which registration is required by Colorado law,

shall furnish the Owner proof that they are currently registered as Professional Engineers by the State of Colorado, shall give the Owner full data as to similar work on which they have been engaged and shall demonstrate to the Owner's satisfaction that they have no connection with the sale of any equipment or material such as might be used in connection with the Project and that they are not currently engaged or interested in any business which may cause a preference for specific products or services connected with the Project. No engineer or consultant shall begin work until approved by the Owner, and in each instance the Owner's approval shall be evidenced to the Architect in writing. Any of such engineers or consultants may be employees or, if registered, partners, or shareholders of the Architect.

#### **1.04 MEETINGS**

The Architect, principal partner, shareholder, or a responsible senior member of the Architect's staff, shall attend such conferences with designated representatives of the Owner, and/or the Contractor, as may be requisite to gain a complete understanding of the Project and the requirements of the Owner in such regard. This shall include but is not limited to Design Progress Meetings and Construction Progress Meetings.

#### **1.05 TIME SCHEDULE AND BUDGET**

**1.05.01** Prior to commencing services hereunder, the Architect shall have secured from the Owner the established time schedule, the approved budget for the Project, and the Owner's minimum educational facility standards.

**1.05.02** If Owner is using a CM/GC delivery method, then, in conjunction with the Schematic Design, Design Development, and Construction Documents phases, the Contractor shall prepare and submit to the Owner the Project cost estimates. These estimates shall be used by the Owner, the Architect, and the Contractor in the evaluation of the Project as it relates to the intended scope of the Project and the approved budget of the Owner and will form the basis for any changes therein. Prior to the Schematic Design Studies and submittal of the Design Development Documents, the Architect shall have agreed with the Owner on the established time schedule and a dollar amount that is needed for the construction of all elements of the Work designed or specified by the Architect, including but not limited to the CM/GC's fee, bond and insurance premiums, all reimbursables, together with any and all CM/GC contingency amounts in accordance with the Construction Management/General Contractor Agreement.

#### **1.06 RECORD DRAWINGS**

Upon completion of the Project, Architect shall furnish to the Owner electronic copies of record drawings for the Project in a file format of the Owner's choosing.

**ARTICLE 2      OWNER'S RESPONSIBILITY**

**2.01      SERVICES FURNISHED BY OWNER**

**2.01.01** So far as the Project contemplated by this Agreement may require, the Architect and its engineers, consultants and sub-consultants shall be entitled to information giving a complete and accurate survey of the building site and the existing grades and lines of streets, pavements, and adjoining properties; information as to the rights, restrictions, easements, surface water courses, boundaries, and contours of the building site; and full information as to existing sanitary sewer, storm sewer, water, gas, telecommunication, and electrical services. The Owner, at its expense, shall furnish all such data to the Architect upon request or, at the Owner's option, may require the Architect to procure such information, in which event the cost incident thereto shall be paid directly by the Owner. The Owner likewise shall pay for all borings or test pits and for any mechanical, chemical, or other tests as well as professional verifications and inspections incident to proper appraisal of the site for the contemplated structure. The Architect and its structural engineer shall provide the Owner with a written program outlining the information required for proper design and, working with the soils engineer, locate the minimum number of test holes required on the site. Upon receipt of the report from the soils test engineer, the Architect will inspect this document with regard to the program requirement submitted and advise the Owner whether or not these requirements have been fulfilled. A copy of all reports of such tests and borings shall be filed with the Owner. Specialized engineering services, other than the normal services as provided in Section One of this Agreement, when specifically requested by the Owner, will be paid for by the Owner.

**2.01.02** In addition to the above, the Owner shall furnish to the Architect the following services for each Project/site:

**2.01.02.01**      Travel expenses to other cities for the purpose of visiting other projects when requested and approved by the Owner.

**2.01.02.02**      General program of functional areas.

**2.01.02.03**      Specific technical program of functional requirements.

**2.01.02.04**      Review of design phases.

**2.01.02.05**      Review of site planning.

**2.01.02.06**      Handle all claims arising under insurance policies issued to the Owner and all claims arising or in connection with performance, completion, and payment bonds.

**2.01.02.07**      Prompt decisions on selection of materials, equipment, and colors.

- 2.01.02.08** Such general conditions developed by the Owner as the Owner may wish the Architect to use.
- 2.01.02.09** General review of final plans and specifications.
- 2.01.02.10** Geologic Hazard Review.
- 2.01.02.11** Reproduction costs on all sets of plans and specifications excluding internal check sets or coordination sets.
- 2.01.02.12** Printed sets of General Contract Conditions.
- 2.01.02.13** Printed sets of other Contract Documents.
- 2.01.02.14** Receive and forward bids for evaluation.
- 2.01.02.15** Award contracts.
- 2.01.02.16** Monitor compliance with insurance requirements.
- 2.01.02.17** General review of job progress.
- 2.01.02.18** Review monthly pay estimates.
- 2.01.02.19** Provide standard forms for monthly pay certificates, insurance certificates, and change orders.
- 2.01.02.20** Warranty Work Request meetings with Architect during one-year warranty period and extended warranty periods for manufactured products.
- 2.01.02.21** Environmental hazard review and remediation as determined by Owner.
- 2.01.02.22** Owner representation services.
- 2.01.02.23** If applicable, contractor or construction manager / general contractor services.

**2.01.03** The Architect represents that it is not relying on any representations or promises by the Owner except as set forth in this Agreement.

**ARTICLE 3 PAYMENTS TO THE ARCHITECT**

**3.01 THE ARCHITECT'S BASIC FEE**

**3.01.01** The amount of the Architect's basic services, fixed fee in this Agreement shall be a negotiated, lump sum maximum amount.

**3.01.02** The basic services, fixed fee for this Project is **Seven Hundred Sixty Thousand Dollars (\$760,000.00)** as set forth in Exhibit B, attached hereto and made a part hereof ("Basic Fee"), payable as set forth in Exhibit B, Fee Schedule.

**3.01.03** Items Covered by the Architect's Basic Fee. Unless otherwise stipulated, the Architect shall accept the compensation stated in this Agreement as full payment for furnishing all the materials, transportation, apparatus, equipment, services, labor, tools, and all other things necessary for the complete and proper execution of the work contemplated by or reasonably implied from this Agreement, Exhibit A, Professional Services, within the time limits indicated in the Delivery Schedule set forth in Exhibit C, attached hereto and made a part hereof. Such amount shall include any loss or damage arising from the nature of the work, from the action of the elements or from any unforeseen difficulties which may be encountered; all risks of every description connected with the prosecution of the work; all expenses incurred in consequences of any suspension or discontinuance of the work; and all other amounts necessary for completing the work pursuant to the Architect Agreement, within the time limits indicated therein.

**3.01.04** Reimbursable Expenses. In addition to the Basic Fee, the Owner shall provide an allowance for actual reimbursable expenses incurred by the Architect, the Architect's employees and consultants directly related to the Project. **A limit of Eight Thousand and 00/100 Dollars (\$8,000.00)** is agreed to for total reimbursable expenses by the Architect on the Project. The Architect will inform the Owner when this limit is reached and will not invoice for reimbursable expenses beyond this limit without prior authorization in writing from the Owner. When approved in advance by the Owner in writing, the Owner will reimburse the Architect for travel directly related to the Project at the IRS-approved rate for mileage reimbursement.

### **3.02 ADDITIONAL COMPENSATION AND SPECIAL CASES**

**3.02.01** If the Architect, after the Schematic Design, Design Development, and Contract Documents have been approved, is caused extra design effort or other expense due to the changes ordered by the Owner and through no fault of the Architect, or due to the delinquency or incompetency of the Contractor, or as a result of damage or fire, the Architect shall be equitably paid for such extra expenses and the service involved provided that the extra work is clearly not contemplated by this Agreement or results in substantial savings in the cost of the Project to the Owner. Such compensation shall be computed on the following basis:

**3.02.01.01** Principal's time at the fixed rate as identified in Exhibit B. For the purpose of the Agreement the principals are: **Paul C. Hutton**.

**3.02.01.02** Employee's time at the fixed rate as identified in Exhibit B.

**3.02.01.03** Services of professional consultants under the supervision of the Architect computed at a multiple of one and one-tenth (1.10) the amount billed to the Architect.

**3.02.01.04** Actual amount of reimbursable expenses such as transportation and living expense when travel is authorized by the Owner in connection with the Project, long distance calls, reproduction of plans and specifications in excess of the number required to be furnished by the Architect pursuant to this Agreement, postage and handling, and fees paid for securing approval of authorities having jurisdiction over the Project.

**3.02.02** The Architect shall maintain an accurate cost accounting system as to all such additional expenses and shall make available to the Owner, upon request, all records, canceled checks, and other disbursement media to substantiate any and all requests for payments hereunder.

**3.02.03** The Architect shall file with the Owner and, prior to incurring such expenses, secure the Owner's approval of rates per hour, per day or other basis of cost for architectural, structural, mechanical, civil, and electrical engineering or other services not otherwise contemplated by the Architect's Basic Fee.

**3.02.04** The sum payable to the Architect for additional compensation shall not exceed the total sum of One Thousand and 00/100 Dollars (\$1,000.00) unless the Architect first shall have filed with the Owner an estimate of the maximum cost of such additional service and been authorized by the Owner in writing to proceed. If such an estimate is filed with the Owner, then payment shall not exceed the maximum cost estimated by the Architect and approved by the Owner.

**3.02.05** If the Owner, at any time during the performance of this Agreement, shall require the omission of a substantial amount of such work or if at any time the Owner shall deem it expedient or it shall become necessary for the Owner to abandon or defer the Project under the construction contracts or any part thereof before completion of the Services to be rendered hereunder, the Architect shall be entitled to receive just and equitable compensation for all work satisfactorily performed prior to the date on which the Architect shall have received notice to discontinue the Project.

**3.02.06** The Architect's Basic Fee shall compensate the Architect for Services rendered in respect to the Project as above-defined.

**3.02.07** The Basic Fee applies to all of the work contemplated to complete the Project, to be awarded under at least one general contract through the Contractor with multiple bid packages anticipated.

**3.02.08** No additional fee shall be paid by reason of or in connection with the purchase of any furniture, equipment, or materials, whether or not built into the structure.

**3.02.09** If the Architect, due to written direction and approval from the Owner as set

forth in Section 3.2 of this Agreement, performs services in respect to any items specifically excluded from the scope of the Project as set forth in the Recitals section of this Agreement, he shall be compensated for his services as set forth in Section 3.02 of this Agreement.

**3.02.10** In no event shall the Owner pay any additional fee for additional services performed by Architect as a result of Architect's failure to design the Project to conform to Owner's final approved construction budget.

#### **ARTICLE 4 INDEMNIFICATION**

Architect shall indemnify, hold harmless and defend Owner, Owner's employees, officers, and board members, from and against all claims, actions, demands, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury or property damage or destruction (other than to the work itself), that may arise from the performance of the Services rendered under this Agreement, but only to the extent of the negligent or intentional acts, errors or omissions of Architect, Architect's sub-consultant or anyone employed directly or indirectly by any of them or anyone for whose acts or omissions any of them may be liable. Architect shall not be required to defend, indemnify or hold harmless Owner for negligent or intentional acts, omissions or errors of Owner, Owner's contractors, or their employees. The indemnification obligation shall not be limited by any amount or type of damages, compensation or benefits payable by or for Architect under workers' compensation acts, disability benefit acts or other employee benefit acts. This provision shall survive the termination of this Agreement.

#### **ARTICLE 5 INSURANCE COVERAGE**

##### **5.01 INSURANCE**

**5.01.01** The Architect, at its expense, shall procure and maintain in effect at all times throughout the duration of the Project and including the one-year warranty period all insurance requirements and limits as set forth below. The Architect shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this Agreement. Completed certificates of insurance shall be filed with the Owner within thirty (30) days after the Effective Date of the Agreement. Such certificates shall specifically state the inclusion of the coverages and the provisions set forth herein and shall state whether the coverage is "claims made" or "per occurrence". In case of any claims made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

**5.01.01.01** The Architect shall procure and maintain professional liability insurance with a retroactive date equivalent to the Effective Date. Such coverage shall provide a limit of \$1,000,000 per claim/occurrence and \$2,000,000 aggregate on a "claims-made" basis, and shall remain in effect for a period of three (3) years following final acceptance of the Project. Architect shall be responsible for any and all deductibles. The required professional liability insurance policy shall be

purchased and premiums for the terms specified herein paid not later than the Effective Date.

**5.01.01.02** The Architect shall procure and maintain workers' compensation insurance at its own expense during the term of the Agreement, including occupational disease and death coverage for all employees per statutory requirements of Colorado, and employer's liability insurance with a limit of liability of at least \$100,000 each accident; \$500,000 policy limit by disease; and \$100,000 each employee by disease. Such policy shall contain a waiver of subrogation in favor of the Owner. To the extent Architect's consultants or sub-consultant do not furnish workers' compensation insurance in accordance with these terms, Architect accepts full liability and responsibility for Architect's consultants' or sub-consultant' employees.

**5.01.01.03** The Architect shall procure and maintain commercial general liability insurance with limits of not less than \$1,000,000 per claim/occurrence and \$2,000,000 aggregate. Such insurance shall contain a waiver of subrogation in favor of the Owner and shall name the Owner, its board members, officers, and employees as additional insureds. Such policy shall be endorsed to be primary and non-contributory with any insurance maintained by additional insureds.

**5.01.01.04** The Architect shall procure and maintain comprehensive automobile liability insurance for owned, hired, and non-owned vehicles, including coverage for all power mobile equipment used by the Architect on District property, with a combined single limit of \$1,000,000/person, \$1,000,000/accident, and \$1,000,000/property damage. Such insurance shall contain a waiver of subrogation in favor of the Owner.

**5.01.01.05** Umbrella Liability: \$2,000,000 each occurrence and \$4,000,000 aggregate.

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

**5.01.02.01** Any and all deductibles or self-insured retentions contained in any insurance policy shall be assumed by and at the sole risk of the Architect;

**5.01.02.02** If any of the said policies shall fail at any time to meet the requirements of this Agreement as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of this Agreement, the Architect shall promptly obtain a new policy, submit the same to the Owner for approval if requested, and submit a certificate of insurance as hereinbefore provided. Failure of the Architect to furnish, deliver and maintain such insurance as provided herein shall constitute a material breach of this Agreement for which, in the sole discretion of the Owner, the Owner may immediately declare this Agreement suspended, discontinued, or terminated or the Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all money so paid by the Owner

shall be repaid by the Architect to the Owner upon demand, or the Owner may offset the cost of the premiums against any money due to the Architect from the Owner. Failure of the Architect in obtaining and/or maintaining any required insurance shall not relieve the Architect from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Architect concerning indemnification;

**5.01.02.03** Unless otherwise specified, such insurance shall be written by sureties legally authorized to write such insurance in the State of Colorado, provided such surety companies have a current Best Credit Rating of A- or higher and a current Financial Size Category of Class X or greater;

**5.01.02.04** Receipt, review or acceptance by the Owner of any insurance policies or certificates of insurance required by this Agreement shall not be construed as a waiver or relieve the Architect from its obligation to meet the insurance requirements contained herein;

**5.01.02.05** If the expiration date of the insurance certificate is prior to Final Completion and any warranty periods provided herein, the Architect shall provide a new certificate of insurance to Owner at least thirty (30) days prior to the expiration of the current policy;

**5.01.02.06** The Architect waives any and all rights to recover against the Owner or against its board members, officers, agents, or employees, for any loss or damage to the Architect arising from any cause that is covered or required to be covered by the insurance that the Architect is required to carry pursuant to this Section 5.01, or which is covered by any other insurance actually carried by the Architect to the extent of the limits of such policy;

**5.01.02.07** From time to time, the Architect shall cause its insurer to waive such insurer's subrogation rights under policies against the beneficiaries of this waiver. Architect shall require that all of its agents and sub-consultant also comply with the insurance requirements of this Section 5.01; and

**5.01.02.08** The policies required by Subsections 5.01.01.01 and 5.01.01.03 above shall be endorsed to include the Owner, the Owner's officers, board members and employees, as additional insureds. The policies required by Subsections 5.01.01.01, 5.01.01.03 and 5.01.01.04 shall be primary insurance, and any insurance carried by the Owner, its board members, officers, or its employees, or carried by or provided through any insurance pool of the Owner, shall be excess and not contributory insurance to that provided by the Architect. The Architect shall be solely responsible for any deductible losses under any policy required above.

## **ARTICLE 6 GENERAL PROVISIONS**

### **6.01 SEPARATE CONTRACTS**

Should the Owner choose to award other separate contracts, where the Architect's services are required, the fee in respect of each such contract shall be similarly negotiated and computed separately in the manner provided in Subsection 3.01 of this Agreement.

## **6.02 OWNERSHIP OF DESIGN DOCUMENTS**

**6.02.01** Prior to the full payment of amounts due to Architect under this Agreement, all notes, memoranda, photographs, spreadsheets, data, electronic data, Drawings, Specifications, designs, plans and other supporting documents prepared or furnished by Architect to Owner under this Agreement, including Schematic Design Documents and Construction Documents ("Work Product") are deemed to be instruments of service and Architect shall retain the ownership and property interests therein, including the copyrights thereto. Upon receipt of full payment of amounts due to Architect at the time of Final Completion of the work or upon earlier termination of this Agreement or abandonment of the Project, the Work Product, including the rights, title and interest in and copyrights thereto shall be assigned to and become the property of Owner; provided, however, that any use of the Work Product by Owner through its employees, agents or third parties, other than as required for completion of the work or in connection with the Project, is at Owner's sole risk and without liability or legal exposure to Architect or anyone working by or through Architect, including Architect's consultants of any tier. The Work Product shall promptly be delivered to Owner upon payment of all valid amounts due to Architect upon Final Completion of the work, abandonment of the Project or termination of this Agreement.

**6.02.02** During the term of this Agreement, to the extent of their rights in the Work Product, each party hereby grants to the other a limited license to use and reproduce applicable portions of the Work Product in connection with the completion of work under the Contract Documents. The license granted by this Section shall terminate upon Final Completion of the work, abandonment of the Project and the termination of this Agreement.

**6.02.03** Architect shall cause its contracts with Architect's consultants to conform to the provisions of this Section 6.02.

**6.02.04** Architect shall defend any action or proceeding brought against Owner based on any claim that the Work Product, or any part thereof, or the operation or use of the Work Product or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Architect of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Architect shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Architect in any such action or proceeding. Architect agrees to keep Owner informed of all developments in the defense of such actions.

**6.02.05** If Owner is enjoined from the operation or use of the Work Product, or any part

thereof, as the result of any patent or copyright suit, claim, or proceeding, Architect shall at its sole expense take reasonable steps to procure the right to operate or use the Work Product. If Architect cannot so procure such right within a reasonable time, Architect shall promptly, at Architect's option and at Architect's expense, (i) modify the Work Product so as to avoid infringement of any such patent or copyright or (ii) replace said Work Product with Work Product that does not infringe or violate any such patent or copyright.

**6.02.06** Sections 6.02.04 and 6.02.05 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Architect to Owner or (ii) arising from modifications to the Work Product by Owner or its agents after acceptance of the work. Nothing herein shall be construed to waive or limit such rights, privileges or defenses available to the Owner pursuant to Article 11, Section 1 of the Colorado constitution or pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

**6.02.07** The obligations set forth in Sections 6.02.04 through 6.02.06 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

**6.02.08** Inasmuch as the Construction Documents are the property of the Owner, it is mutually understood and agreed that the Owner has full authority to use, employ, or modify the Construction Documents in such manner as the Owner may desire, including but not limited to construction of more than one structure from the Construction Documents, as provided in this Article 6.02. The Architect, as well as the engineers and other consultants retained by the Architect to perform work in connection with the Project, accordingly waive any and all copyright rights they have with respect to the Construction Documents consistent with Section 6.02.01. Every agreement between the Architect and the engineers and other consultants it retains to perform work in connection with the Project shall include the foregoing provisions in this Section 6.02.08.

**6.02.09** It is mutually understood and agreed that under ordinary circumstances the Owner will procure the services of the Architect herein for every project based on the Construction Documents, even if the Project is abandoned as provided in Section 6.03 of this Agreement; provided that the Architect is then living, in good standing professionally, and physically able to undertake the work. However, the Owner reserves the right to designate another architect for any such new project, as well as for the Project if thus resumed after abandonment, even though the original Architect shall be living at that time if, in the sole judgment of the Owner, its best interests so require. If the Owner employs the Architect herein as the architect for any such new project, or for the Project if thus resumed, the provisions of this Agreement shall govern such employment except that in lieu of the basic fee provided for in Section 3.01 of this Agreement on any new project, the Owner shall negotiate in good faith with the Architect to establish the total amount to be paid to the Architect for such services.

**6.02.10** It is mutually understood and agreed that in the event the parties are unable to negotiate a mutually acceptable fee as provided in Section 3.01 above, or the Architect is not retained in the event the Project is resumed after abandonment, or the Architect is not retained on a new project based on the Construction Documents, neither the Architect nor any of the engineers or other consultants it has retained to perform work in connection with the Project shall be entitled to any royalty fee with respect to the Construction Documents. It is further mutually understood and agreed that neither the Architect nor its consultants assume any responsibility for a new project built using such Construction Documents, unless they are employed directly on the new project. If the Construction Documents are reused by the Owner but the Architect herein is not employed on such project, then the Architect's name and registration stamp shall be removed therefrom.

### **6.03 FAILURE OF OWNER TO CONSTRUCT THE PROJECT**

**6.03.01** If, at any time, the Owner abandons the Project contemplated by this Agreement, the Architect shall be entitled to and shall receive as full payment hereunder, reimbursement of its costs necessarily incurred incident to the Project to the date of such abandonment, together with a fair and reasonable compensation for its Services rendered to that date. The Architect will not be reimbursed for nor will Owner otherwise be liable for any anticipated profit or lost opportunity as a result of the Owner's abandonment of the Project contemplated by this Agreement.

**6.03.02** If the Owner abandons the Project, the Architect shall immediately deliver to the Owner all Work Product in whatever format it exists. The Owner shall have the right to use, employ, or modify the same in the construction of the contemplated building or improvements, in accordance with Section 6.02.

### **6.04 TERMINATION**

**6.04.01** Upon written notice, the Owner may terminate this Agreement in whole or in part if it determines, in its sole discretion that termination is in the Owner's best interest. After written notice of termination has been given, the Architect shall promptly stop work on the cancellation date specified in the notice. The Owner will conduct an audit of the Architect's costs to determine reasonable costs expended to the date of cancellation, or the Owner may determine the Architect's cost based on the schedule of values specified in Exhibit B or the exact cost of any work performed. The Architect will not be reimbursed for nor will Owner otherwise be liable for any anticipated profit or lost opportunity as a result of Owner's termination of this Agreement.

**6.04.02** This Agreement may be terminated by the Owner upon not less than five (5) days' written notice should the Architect fail to perform in accordance with the terms of this Agreement through no fault of the Owner. If the Owner fails to make payment when due, the Architect may, upon ten (10) days written notice to Owner, suspend performance. Unless payment is received by the

Architect within ten (10) days of date of notice, the suspension shall take place without further notice.

**6.04.03** In the event of termination, the Architect shall deliver to the Owner all Work Product as well as any materials relating to the Project prepared by or in the possession of the Architect.

#### **6.05 ARCHITECT'S PARTNERSHIP PERMITTED**

The Architect may, with the prior written consent of the Owner, join with it in the performance of this Agreement any other duly licensed architect or architects with whom he may, in good faith, enter into partnership or professional corporation relations. In the event of dissolution of a partnership employed as Architect, other than by death of a partner, if the members thereof cannot agree as to which of them shall continue with the work, the Owner, in its sole judgment, may designate which former partner shall continue with the work and may make all payments thereafter falling due in connection with the Project directly to the person or persons so designated and without being required to provide for the application of such payments as among the former partners.

#### **6.06 INDEPENDENT CONTRACTOR**

The Architect understands and acknowledges that this Agreement is a contract for services and that an employee-employer relationship does not exist between the Architect and the Owner. The Architect shall perform all Services, using independent judgment and expertise, as an independent architect and not as an employee of the Owner. Neither the Architect nor any agent, employee or sub-consultant of the Architect shall be an agent or employee of the Owner nor shall any of them have any authority, express or implied, to bind the Owner to any agreement or incur any liability or obligation attributable to the Owner. **The Architect acknowledges that it is not entitled to workers' compensation or other benefits from the Owner and that the Architect is obligated to pay federal and state income tax on any moneys earned from the Owner pursuant to this Agreement.**

#### **6.07 DEATH OR DISABILITY OF ARCHITECT**

In the event of the death of one member of a partnership employed as Architect by the Owner, the surviving member or members of the partnership shall succeed to the rights and obligations of the original partnership hereunder. In the event of the death of a sole Architect or in the event of the Architect's failure, refusal or inability to continue performance hereunder, then the Architect (or the Architect's conservator, executor or administrator, such as the case may be) shall be paid such sums as may be due the Architect under the provisions of Section 3.01 and Section 6.04 of this Agreement, and shall also be paid that proportion of the Basic Fee which the value of the services theretofore rendered bears to the full Basic Fee. In such event all Work Product shall be promptly delivered to the Owner with full authority to use, employ or modify the same in the construction of the contemplated project, either at the same site or at some other site.

## **6.08 DISPUTES**

In the event that any dispute between the parties arises out of this Agreement, the parties shall meet and confer in a good faith effort to resolve such dispute. In the event such efforts do not resolve the dispute within fifteen (15) days from the date the dispute arises, the Owner may elect to submit the dispute to mediation before the Judicial Arbitrator Group or other independent mediation service. This provision shall survive termination of this Agreement. This provision shall not be considered an election of remedies. The Owner may elect to pursue litigation for any dispute arising under this Agreement at any time.

## **6.09 IMMUNITY**

The Owner retains all of its rights, privileges and immunities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

## **6.10 TAXES AND FEES**

**6.10.01** The Architect shall pay, at its own expense, all applicable taxes and fees in the execution of the terms of this Agreement, including but not limited to excise tax, federal and state income taxes, payroll and withholding taxes, unemployment taxes, and workers' compensation payments for its employees, and shall indemnify and hold the Owner harmless for all claims arising under such taxes and fees.

**6.10.02** The Owner is exempt from the payment of any state, and most municipal, sales and use taxes for materials, supplies, and equipment used in the performance of this Agreement. The Architect shall not include any of these taxes in any charges or invoices to the Owner.

## **6.11 NONDISCLOSURE OF CONFIDENTIAL INFORMATION**

The Architect will not disclose to any third person or entity any records or writings of the Owner, its employees or students, regardless of the form, that are protected by state or federal law no matter how those documents come into the Architect's possession.

## **6.12 FORCE MAJEURE**

The Owner may delay delivery, performance or acceptance occasioned by causes beyond its control. The Architect shall hold goods or delay performance at the direction of the Owner and shall deliver goods or perform Services when the cause affecting the delay has been removed. The Owner shall be responsible only for Architect's direct additional costs in holding the goods or delaying performance of this Agreement at Owner's request. Causes beyond Owner's control shall include but not be limited to government action or failure of the government to act where such action is required, strike or labor disputes, fire or unusually severe weather.

### **6.13 GOVERNING LAW/VENUE**

The laws of the State of Colorado shall govern the performance and interpretation of the Agreement. Venue for any dispute concerning the Agreement shall be exclusively in the federal court located in Colorado or the state court located in Douglas County, Colorado.

### **6.14 ASSIGNMENT OF AGREEMENT NOT PERMITTED**

The Architect may not assign this Agreement or any sum becoming due to the Architect under the provisions of this Agreement, without the prior written consent of the Owner.

### **6.15 AGREEMENT BINDING ON SUCCESSORS AND ASSIGNS**

Subject to Section 6.14, this Agreement shall be binding upon and inure to the benefit of the partners, heirs, executors, administrators, successors and assigns of the respective parties hereto.

### **6.16 INTENT AND MODIFICATION OF THIS AGREEMENT**

The Owner and Architect agree that it is the specific intent of this Agreement to define, grant, and specify the responsibility and authority of the Architect. In any matters during the work under this Agreement that are not specifically covered and defined by this Agreement, the authority and direction for such matters must come from the Owner. The Architect shall in all such matters request in writing and receive written direction and approval from the Owner prior to carrying out any such work.

### **6.17 LIMITATION OF ACTIONS**

**6.17.01** Unless a longer period is provided by law, any action against the Architect brought to recover damages for deficiency in the design, planning, supervision, inspection, construction or observation of construction or for injury to person or property shall be brought within two years after the claim for relief arises and is discovered by the Owner; provided, however, if written notice of a potential claim is given to the Architect within such two-year period, then an action may be brought within six (6) years after the claim for relief arises and is discovered by the Owner. "Discovered" as used herein means detection and knowledge by the Owner of the defect in the improvement that ultimately causes the injury, when such defect is of a substantial or significant nature.

**6.17.02** Unless a longer period is provided by law, in no case shall such an action be brought more than ten (10) years after the final completion and acceptance of the Project; provided, however, in any case where the cause of action arises during the ninth or tenth year, such action shall be brought, as stated in Subsection 6.17.01 above, within two years after such cause of action arises and is discovered by the Owner or within six (6) years after such cause of action arises and is discovered by the Owner when written notice is given within such two-year period.

### **6.18 WAIVER**

No waiver of any breach of any one of the agreements, terms, conditions or covenants of this Agreement by the Owner or the Architect shall be deemed to imply or constitute a waiver of any other agreement, term, condition or covenant of this Agreement. The failure of the Owner, or the Architect to

insist on strict performance of any agreement, term, condition or covenant, herein set forth, shall not constitute or be construed as a waiver of the rights of either or the other thereafter to enforce any other default of such agreement, term, condition or covenant; neither shall such failure to insist upon strict performance be deemed sufficient grounds to enable the Owner or the Architect to forego or subvert or otherwise disregard any other agreement, term, condition or covenant of this Agreement.

**6.19 SEVERABILITY**

If any provisions of this Agreement are in violation of any statute of any jurisdiction in which it may be sought to be enforced, then such provisions shall be deemed null and void to the extent that they may be violative thereof, but without invalidating the remaining provisions.

**6.20 NOTICES**

Any notices required or permitted under this Agreement or which any party elects to give shall be in writing and delivered either personally to the other party's authorized agent set forth below (or as changed by written notice), or by depositing such notice in the United States first class mail, postage fully prepaid, to the person at the address set forth below, or to such other address as either party may later designate in writing in accordance with these notice procedures. Any notice given by mail as herein provided shall be deemed given when deposited in the United States mail:

**OWNER:**

Douglas County School District RE-1  
Attn: Chief Operations Officer  
620 Wilcox Street  
Castle Rock, Colorado 80104

**ARCHITECT:**

Cunningham Group Architecture, Inc.  
Attn: Paul C. Hutton  
601 South Broadway, Suite N  
Denver, Colorado 80209  
Cunningham.com

**6.21 ENTIRE AGREEMENT**

This Agreement, together with the documents incorporated herein by reference, including without limitation the General Contract Conditions, contains all of the terms, conditions, and provisions hereof and the entire understanding and all representations of understanding and discussions of the parties relating thereto, and all such prior representations, understandings, and discussions are merged herein and superseded and canceled by this Agreement. This Agreement may only be modified or

amended by further agreement in writing executed by the parties hereto.

#### **6.22 COUNTERPARTS**

This Agreement may be executed in several counterparts, and each such counterpart shall be deemed an original. For purposes of executing this Agreement, facsimile or scanned signatures shall be as valid as the original.

#### **6.23 EXHIBITS**

The following exhibits are attached hereto, or shall be attached hereto, and are specifically made a part of this Agreement by this reference:

Exhibit A: Professional Services

Exhibit B: Fee Schedule

Exhibit B-1: Hourly Rates

Exhibit C: Delivery Schedule

Exhibit D: General Contract Conditions and Supplementary Conditions

#### **6.24 ILLEGAL ALIENS**

Architect certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to C.R.S. § 8-17.5-102(5)(c), Architect shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to Architect that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

#### **6.25 COMPLIANCE WITH LAWS AND POLICIES**

The Architect shall abide by all applicable laws to the performance of the Services and the subject matter of this Agreement and by all Owner policies and procedures, including without limitation those related to the prohibited use and/or possession of alcohol, tobacco or firearms on Owner's grounds. The Architect shall at all times strictly enforce this prohibition among its own employees, agents or sub-consultant and their employees, agents or sub-consultant.

#### **6.26 NONDISCRIMINATION**

During the performance of this Agreement, the Architect agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, disability, age, religion or other legally protected status. The Architect will take action to ensure that all applicants for employment are treated fairly during application and interviewing processes, and that employees are treated fairly during their employment, without regard to their race, creed, color, sex, sexual orientation, national origin, disability, age, religion or other legally protected status. Such action shall include, but not be limited to employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Architect shall state, in all solicitations or advertisements for employees placed by or on behalf of the Architect, that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, national origin, disability, age, religion or other legally protected status.

#### **6.27 HEADINGS**

The headings used in the Contract Documents are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

*(Remainder of page intentionally left blank, signature page to follow)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

DOUGLAS COUNTY SCHOOL DISTRICT RE-1

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CUNINGHAM GROUP ARCHITECTURE, INC.

By: Paul C. Heithaus  
Its: Principal

## EXHIBIT A

### PROFESSIONAL SERVICES

#### **A.1 SCHEMATIC DESIGN PHASE**

A.1.1 The Architect shall prepare Schematic Design Documents of the Project leading to a recommended basic design of the building or improvements and a plan for the development of the site, together with a general description of the Project, including construction cost estimates and a preliminary schedule, for approval of the Owner. This estimate shall be used by the Owner and the Architect in the evaluation of the Project as it relates to the intended scope of the Project and the approved construction budget of the Owner and will form the basis for any changes therein. This material shall be submitted to the Owner in accordance with the Owner-approved design and construction schedule. Architect's scope of services during the Schematic Design Phase shall include but not be limited to:

A.1.1.1 If Owner is using a hard bid delivery method, preparation of an independent cost estimate at the conclusion of the Schematic Design Phase for review by Owner;

A.1.1.2 If Owner is using a CM/GC delivery method, Architect shall review and opine on the validity of Contractor's cost estimate;

A.1.1.3 Owner reserves the right, in its discretion, to obtain an independent cost estimate for comparison with Architect or Contractor's cost estimate;

A.1.1.4 Provision of options for site plan/floor plan layout for each school or building within the Project, for review and comparison with Owner and Contractor (if applicable);

A.1.1.5 Discussion of alternatives and options for mechanical and electrical systems and energy modeling; and

A.1.1.6 Provision of a drainage study (SWPPP) for the Project site, if required by applicable law or regulations.

A.1.2 The Schematic Design Documents shall be submitted to the Owner in accordance with the Owner-approved design and construction schedule. Schematic Design Documents must be approved by the Owner prior to preparation of the Design Development Documents. Approval by the Owner of the Schematic Design Documents shall be deemed to be approval of the concept though not the means, techniques, or particular materials recommended by the Architect.

#### **A.2 DESIGN DEVELOPMENT PHASE**

A.2.1 For approval by the Owner, the Architect shall prepare from the approved Schematic Design Documents, the Design Development Documents consisting of drawings and other documents to

fix and describe the size and character of the entire Project as to structural, mechanical, civil, and electrical systems, materials and such other essentials as may be appropriate. The Design Development Documents shall be delivered to the Owner in accordance with the Owner-approved design and construction schedule. These documents must be approved by the Owner prior to the preparation of the Construction Documents or the release of any phase of the Project for bidding. In the event the Owner determines to go forward with the Project and award contracts even though they may exceed the approved budget, then such increased construction costs over the budget shall not be the responsibility of the Architect. In the event models, renderings, or photographs are required, the Owner will reimburse the Architect at a fee negotiated by the Owner separate from the extra work fee provided for in this Agreement. Architect's scope of services during the Design Development Phase shall include but not be limited to:

A.2.1.1 If Owner is using a CM/GC delivery method, assistance in the review and evaluation of CM/GC cost estimate and overall project budget/scope;

A.2.1.2 Provision of site plans, floor plans, mechanical, electrical, telecommunications, civil, kitchen planning, plus building elevations and sections to fix the building and site features;

A.2.1.3 Modeling mechanical systems options, including but not limited to BIM or energy modeling or both, to aid Owner in the selection of the system to include in the design; and

A.2.1.4 Provision of sustainable design features documentation/guidance to aid Owner in making decisions about Project design and scope.

A.2.2 If Owner is using a CM/GC delivery method, the Architect, by the terms of this Agreement, is obligated to provide reasonable cooperation to the CM/GC in the development of estimates of construction cost and the Guaranteed Maximum Price. Conversely, the CM/GC, by the terms of its Agreement with Owner is obligated to provide reasonable cooperation to the Architect in the development of statements of probable construction costs and the Guaranteed Maximum Price. Additionally, both Architect and CM/GC are obligated to reconcile their respective cost estimates at the completion of each design phase of the work and in setting the Guaranteed Maximum Price in a timely manner so as not to negatively impact the Project Schedule.

### **A.3 CONSTRUCTION CONTRACT DOCUMENTS PHASE**

A.3.1 Prior to the approval of the Construction Documents, including the final plans and specifications by the Owner, the Architect shall submit the Construction Documents for the Project to the specific authority having jurisdiction (AHJ) in the appropriate town, city, or county where the Project is located as well as the State of Colorado, administering all applicable building codes, regulations, laws, and ordinances concerning the construction of schools and the functional areas contained therein, including the compliance of same with applicable health codes and the Americans with Disabilities Act of 1990. The

Architect shall make written requests of the authority having jurisdiction for the requisite approvals, and any changes necessary to obtain such approvals shall be made by the Architect at Architect's own expense. Specifically, but not by way of limitation, the Construction Documents are to be reviewed by the planning commission of the appropriate town, city, or county and, if available, the State Department of Public Safety, Division of Fire Prevention and Control (DFPC) and any applicable fire departments (if approved by the Owner), for compliance with the building codes, laws, and ordinances which each administers. All required approvals must be in writing and must be filed with the Owner upon receipt of the building permit. Where code interpretations result in additional construction work or materials, the Architect, at Architect's own expense, shall promptly perform such additional services as may be required to bring the plans and specifications into conformance with such agency requirements.

A.3.2 The Owner may review the proposed Construction Documents and recommend revisions or corrections, as it deems necessary. These recommendations shall be reviewed with the Architect who shall make the necessary revisions or corrections before final bidding documents are issued. Such revisions or corrections shall not be made by Addendum. Previous acceptance of the Design Development Documents will not limit the Owner's rights to request the revisions and/or corrections at this time, but shall entitle the Architect to submit a claim for additional compensation as set forth in Section 3.2, to the extent extra services are required thereby, and shall extend the Architect's time schedule for such period as may be reasonably required to perform such additional work.

A.3.3 Upon approval by the Owner of the Schematic Design Documents and the Design Development Documents, the Architect shall submit an overall reevaluated timetable to the Owner for the complete development of the Construction Documents. The Construction Documents to be furnished shall consist of a complete set of architectural construction drawings, including site plans, complete set of structural, civil, mechanical, electrical, security and telecommunications drawings assembled in an order mutually agreed upon by Owner and Architect, and complete specifications for the Project, as well as other customary drawings, specifications and documents necessary to fully explain the intention of the work. The Owner's General and Supplementary Conditions of the Contract and the Owner's other Contract Documents shall not be modified without approval of the Owner. Supplementary General Conditions as may be needed to fit the Project shall be developed by the Architect and approved by the Owner. All such Construction Documents shall meet with the Owner's approval. Each area of the floor plans, elevations and sections shall be detailed at not less than 1/8"=1' or will be of sufficient scale, detail and clarity to adequately and fully explain the function of the area and the intention of the work and to enable the satisfactory construction of the area. When such Construction Documents are inconsistent with previously approved Schematic Design and Design Development Documents, the Owner reserves the right to disapprove of the architectural, structural, civil, mechanical, and electrical systems recommended and developed by the Architect together with the materials and equipment as shown on the Construction Documents without justifying any claim by the Architect for extra costs. Where additional design effort is required by the Architect for reasons not the fault of the Architect, then the provisions of Section 3.2 shall apply.

A.3.4 Within seven (7) days after approval by the Owner of the proposed Construction Documents, the Architect shall furnish sufficient sets of the corrected Construction Documents as shall be required by the Owner to ensure distribution of official Contract Documents during the bidding period and for construction of the Project. The Owner reserves the right to reproduce at its own expense additional copies of Construction Documents, or to reimburse the Architect for reasonable reproduction costs on all additional sets of Construction Documents.

A.3.5 Architect's scope of services during the Construction Contract Documents Phase shall include but not be limited to:

A.3.5.1 If applicable, assistance with Owner and CM/GC review of design at 50% and 90% Construction Documents stage for conformity to project budget and scope adjustments as appropriate;

A.3.5.2 Provision of a reasonable number of options to be included in the bidding of the projects as alternate bids to assist with budget management; and

A.3.5.3 Updating and tracking LEED or CO-CHPS, or other measures of energy and environmental sustainability, progress/decisions throughout the Construction Documents Phase.

#### **A.4 ARCHITECT TO CONFORM TO BUDGET**

A.4.1 The approved budget for the construction of the Project and for which the Architect shall have sole responsibility for planning is set forth in the Recital of this Agreement. The Architect shall make its final plans and specifications conform to the approved budget. If conditions arise during progress of the Architect's work on the Project that, in the opinion of the Architect, would be sufficient reason for revision of the budget set forth above, the Architect shall so inform the Owner in writing. Upon receipt of such notification, the Owner and the Architect shall review the conditions and the budget and the Owner shall determine whether or not the conditions shall be removed or changed and whether or not the budget amount shall be increased.

A.4.2 In the event that the actual bids received under the completed Construction Documents drawn by the Architect for the Project are in excess of the approved budget, then if the Owner rejects such bids or negotiates reductions in the amount bid with the apparent low responsible bidder, then the Architect hereby agrees that it shall, at no additional cost to the Owner, redraw the plans and revise the specifications using all necessary staff and utmost speed during regular working hours and prepare to re-advertise or do such other reasonable and practical things as may be necessary to bring the costs within the approved budget. The Owner agrees to cooperate with the Architect within the basic framework and educational needs of the Project, as provided to the Architect at the time Architect began the preliminary plans and studies for the Project, in order to accomplish such redrafting of plans and specifications and to secure the receipt of bids that meet the functional needs of the Owner and are within the approved budget.

A.4.3 It is hereby agreed that it is a major and material requirement and consideration of this Agreement for the Owner that the total bids for this Project do not exceed the approved budgeted amount of monies established to cover this Project as set forth in the Recitals of this Agreement with the exception of Owner-approved changes in the Work.

A.4.4 The Architect shall assist the Owner in the bidding process and will prepare, subject to approval by the Owner, the necessary proposal forms for preparation of bids for the construction work by contractors. The Architect shall in good faith follow the Owner's policy concerning plan deposits, particularly noted in the "Advertisement for Bids".

A.4.5 The Architect shall be responsible for reviewing all bids received in conjunction with the Contractor in the case of a CM/GC project delivery method, and making a written recommendation of award thereon.

A.4.6 If it shall prove impossible to secure one or more bona fide bids from reliable contractors based on the plans and specifications prepared by the Architect at a price not exceeding the approved budget for the work, then the Architect shall, if desired by the Owner, change the plans and specifications at Architect's own expense in such manner acceptable to the Owner as may be found necessary to secure bids from reliable contractors at not more than the approved budget. In the event the Owner determines to go forward with the Project and award contracts even though they may exceed the approved budget, then such increased construction costs over the budget shall not be the responsibility of the Architect nor shall increased construction costs form the basis for a request for Additional Services by the Architect.

## **A.5 CONSTRUCTION PHASE**

A.5.1 The Architect shall keep accurate accounts with respect to the work on the Project and shall review and approve certificates for payments submitted by the Contractor and deliver them to the Owner. Such certificates shall be in proper detail, shall duly identify the contract items involved, shall be in the Owner's Construction Department office on or before the 10th day of the month for work performed by Contractor the previous month and submitted by Contractor to the Architect on or before the 5<sup>th</sup> day of the month, and shall follow a standardized form acceptable to the Owner.

A.5.2 As may be required throughout the construction progress, the Architect shall prepare such large-scale, full-size, detailed or other drawings as may reasonably be needed or required to supplement the construction drawings and to permit the proper completion of the Project.

A.5.3 The Architect shall make any necessary revisions in the drawings, render to the Owner, at its request or at the request of the Contractor, rulings on the requirements of the drawings and specifications and shall make additions, reasonable changes or modifications in the drawings and specifications and contracts to meet unanticipated conditions or occurrences or to effectuate changes in the work.

A.5.4 The Architect is a member of the Construction Team and shall have general supervision (as defined in Section A.5.7) and direction of the design elements of the work. He is the agent of the Owner only to the extent provided in the Contract Documents and the contract with the Owner. When in special instances Architect is authorized by the Owner to act, Architect shall, upon request, present to affected third parties Architect's written authority. The Architect shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by the Contractor. The Architect shall have authority to reject work that does not conform to the Contract Documents. Whenever, in its reasonable opinion, the Architect considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, Architect will have authority to require special inspection or testing of any work in accordance with the provisions of the Contract Documents whether or not such work be then fabricated, installed, or completed. Except in case of emergency, the Architect shall not authorize nor direct any stoppage, removal of work in place, or changes in any work without prior written approval of the Owner.

A.5.5 The Architect and sub-consultant shall visit the site at intervals appropriate to the stage of construction, or as otherwise required herein, to become familiar with the progress and quality of the portion of the work completed, and to determine if the work inspected is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Contract Documents. Site visits shall be made by professionally licensed architects or engineers, or non-licensed persons whose work is subject to oversight and review by professionally licenses architects or engineers, who understand the Project requirements and are otherwise competent in evaluating the progress and performance of the various trades in progress. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of the site visits, the Architect shall submit a report to the Owner within one week of each site visit, indicating the date and times of the visit, the person making the visit, a description of the work inspected and shall otherwise keep the Owner reasonably and promptly informed about the progress and quality of the portion of the work completed, and report in writing to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, (2) defects and deficiencies observed in the work and (3) any threats to achievement of the Project milestone for construction activities. Architect shall reject work that does not conform to the Contract Documents unless otherwise directed by Owner. Whenever Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the work. Owner intends to retain an independent testing firm to provide regular inspections of the work and to generate reports of these inspections, which reports shall be provided to Architect and Contractor. Architect shall provide the services in this Section A.5.6 in conjunction with Owner's independent testing firm and shall

help coordinate and facilitate Owner's testing process. Should the quality of workmanship or circumstances beyond the control of the Architect be such that the performance of any of the Construction Documents cannot be carried out to the complete satisfaction of the Architect, Architect shall notify the Owner of such in writing.

A.5.6 The Architect shall furnish such cooperation and attend such conferences with the Owner and/or the Contractor as may be required to promote the satisfactory conduct and completion of the Project. The Architect shall be responsible for initiating the making of written recommendations to the Owner covering necessary change orders in accordance with Section A.5.9 below, and for giving written opinions to the Owner as he may deem appropriate or when requested by the Owner as to the conduct of the work or any questions in connection therewith.

A.5.7 The Architect shall also be the Owner's representative charged with the general responsibility of exercising due diligence to see to it that the terms and intent of the Contract Documents are carried out. The terms "general supervision," "inspection services," and "general or technical supervision and inspection" for purposes of this Agreement shall mean the overseeing of construction for compliance with the requirements of the plans, specifications, and related Contract Documents prepared for the Project and with pertinent laws and regulations. With the exception of the specific inspections as required by Section A.5.5 above and, unless otherwise specified, the Architect shall not be required to make continuous on-site inspections to check the quality or quantity of the work. The Architect shall not be responsible for actual construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work, unless any of such matters have been or should properly be specified in the plans and specifications prepared by the Architect.

A.5.8 The Architect shall maintain careful control over all changes in the plans in the course of the work, after the Construction Documents are originally approved by the Owner. The Architect shall keep a current accurate record of all variations or departures from the Construction Documents as originally approved, which may come to Architect's attention or are discovered in performance of services hereunder or through information provided by the Contractor or subcontractors; shall keep the Owner closely advised in advance, if possible, with respect thereto; and shall advise the Owner to the best of Architect's ability on a current basis of all savings or additions to cost as well as the suitability of the work and Project occasioned by such variations or departures. The Architect shall make recommendations to the Owner concerning the change orders but shall not act for the Owner in approving change orders except in cases involving a matter of an immediate safety nature, the justification for which the Architect shall provide in writing to the Owner within forty-eight hours after the emergency change order is authorized. All change orders must be made on forms supplied by the Owner, and all requests for such change orders must be made in writing. All change order recommendations made by the Architect to the Owner shall be in writing unless otherwise specified by Owner.

A.5.9 In addition to and in conjunction with the general direction of the work, the Architect

and its applicable consultants shall specifically provide and be responsible for the following services, among others:

A.5.9.1 Review and approve shop drawings, samples and other submittals for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents;

A.5.9.2 Inspect bearing surfaces of excavations before footings are poured;

A.5.9.3 Inspect reinforcing steel after installation and before concrete is placed;

A.5.9.4 Inspect structural concrete during and after pouring;

A.5.9.5 Evaluate all laboratory reports;

A.5.9.6 Inspect structural steel after erection and prior to its being covered or enclosed;

A.5.9.7 Inspect mechanical work following its installation and prior to its being covered and enclosed;

A.5.9.8 Inspect electrical work following its installation and prior to its being covered or enclosed;

A.5.9.9 Inspect exposed surfaces for compliance with the Construction Documents; and

A.5.9.10 Provide sales tax affidavits or exemption certificates to the Owner, as appropriate, at the completion of construction.

A.5.10 The Owner reserves the right, at its own expense, to submit all plans and specifications to review by such consultant or consultants as it may select. In the event of such employment of a consultant or consultants by the Owner, they shall cooperate fully with the Architect in order to incur as little delay as possible to the Architect, and the Architect shall make all necessary information fully and promptly available to such consultants. The Owner reserves the right to make changes in the plans and specifications whether or not such changes are the result of suggestions by such consultants or otherwise.

A.5.11 Where, due to changed conditions, ineffectual or improper performance by the Contractor or other unanticipated material conditions, the Architect believes its presence on the Project site is required to an extent in excess of that required or contemplated by this Agreement, then it shall bring such matters to the attention of the Owner in writing, and, with the Owner's written approval, shall perform such additional services, at such additional compensation as may be agreed, but not to exceed the rates set forth in Section 3.01.

A.5.12 When the work or a portion of the work (the scope of which is agreed to by the Contractor, Architect and Owner) is confirmed by previous weekly observations and reports by the Architect to be complete in accordance with the Contract Documents with no missing, incomplete or unfinished work, the Contractor, Architect and sub-consultants, accompanied by the Owner as deemed necessary by the Owner, shall jointly inspect the work. The Contractor shall complete a written report of inspection and detailed "punch list," attested to by the Architect as to contents and date of inspection.

A.5.12.1 If the Architect's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, then the Architect will document in writing and will issue a final punch list of items to be corrected before final inspection and acceptance. Architect shall include inspections for punch list to include initial punch list and follow-up verification of completed work.

A.5.12.2 When the work is inspected in phases or portions, the Date of Final Completion for all of the work shall be established by the date when the last inspection and punch list is complete.

A.5.12.3 The Contractor, on a computerized database acceptable to the Owner, shall generate and maintain the punch list database document until all of the punch list work is complete and the Owner issues the Letter of Acceptance for the entire project.

A.5.12.4 When punch list work is reported as complete by the Contractor, subsequently inspected by the Architect or their sub-consultants and determined to be incomplete, the costs of all subsequent re-inspections of the punch list item by the Architect or their sub-consultants will become the responsibility of the Contractor.

A.5.13 The Architect, upon completion of the Project, shall deliver a written report of final inspection to the Owner, which report shall include a statement that in the Architect's opinion the Project has been fully completed in accordance with the Construction Documents and any amendments thereto, and the Contract Documents; that all guarantees required by the Contract Documents have been delivered in writing to the Owner, and that the Contractor is entitled in the Architect's opinion to final payment upon the contract, stating therein the amount due on said final payment. Such report and/or payment shall not in any manner affect, waive, or release any of the Owner's rights or claims against the Contractor or its subcontractors.

A.5.14 If applicable to the Project, the Architect shall assist Owner in obtaining LEED or CO-CHPS certification, including providing services for the design and construction submittals as required by the applicable program.

A.5.15 The Architect, upon completion of the Project, shall provide a letter to the Owner stating that to the best of the Architect's knowledge asbestos containing material was not incorporated

into the project.

A.5.16 The Architect and sub-consultant/engineers shall make observations as to whether the Contractor's work is in general conformance with the Contract Documents, and report to the Owner the results of the observations. The Architect and sub-consultant/engineers shall cooperate and work with the Owner in resolving any problems arising during the warranty period. The Architect and sub-consultant/engineers shall in good faith and with due diligence endeavor to see that any remedial work found to be necessary is performed in a satisfactory manner by the Contractor responsible for same, shall be responsible for the inspection of such remedial work and shall inform the Owner, in writing, whether such remedial work has been or has not been satisfactorily completed. Nothing in these provisions for inspections of the work after the completion and acceptance of the work by the Architect, sub-consultant/engineers, and the Owner shall be construed to alter or affect the provisions of Section 3.1 of this Agreement regarding the method of payments to the Architect or other warranties provided herein or available to the Owner.

A.5.17 During the project's one-year warranty period, the Architect or the Architect's field representative shall be required to attend Warranty Work Request meetings. The Owner shall establish the date, time, and place of these meetings at the beginning of the one-year warranty period. These meetings will include, but are not limited to, three (3) regular Warranty Work Request meetings and one (1) complete Warranty Work Request meeting, for each school or building within the Project.

**EXHIBIT B**  
**FEE SCHEDULE**

**B.1 CONTRACT AMOUNT**

B.1.1	Basic Services, Not to Exceed:	<b>\$760,000</b>
B.1.2	Reimbursable Expenses:	<b>\$8,000</b>
B.1.3	Total Agreement Amount:	<b>\$768,000</b>

**B.2 FEE PAYMENT SCHEDULE**

B.2.1 During the development of the Schematic Design and Design Development Documents, complete specifications, working drawings and other Construction Documents, the Architect may apply for and shall receive compensation, based on the amount of such work completed. In no event, however, shall payments be made which will make the total of all payments exceed the amounts payable under the provisions of Exhibit B, Subsections B.2.2, B.2.3 and B.2.4.

B.2.2 Upon completion and approval by the Owner of the Schematic Design Phase, pursuant to Exhibit A Professional Services Section A.1, the Architect may request and receive a sum equal to twenty percent (20%) of the Basic Fee.

B.2.3 Upon completion and approval by the Owner of the Design Development Phase, pursuant to Exhibit A Professional Services Section A.2, the Architect may request and receive a sum that, together with previous payments shall increase the total amount paid to it to forty percent (40%) of the fee based upon the approved final budget.

B.2.4 Upon the completion and approval by the Owner of the Contract Document Phase, pursuant to Exhibit A Professional Services Section A.3, the Architect may request and receive a sum that, together with previous payments shall increase the total amount paid to it to seventy-five percent (75%) of the fee based upon the approved final budget.

B.2.5 Upon award of the construction contract, the Architect may request and receive a sum that, together with previous payments, shall increase the total amount paid on account of its fee to seventy-seven and a half percent (77.5%) of the Basic Fee.

B.2.6 Twenty percent (20%) of the Basic Fee shall be payable monthly in proportion to the progress of the work as evidenced by payments to the Contractor, for the Construction Observation Phase of the project.

B.2.7 The final two and a half percent (2.5%) of the Basic Fee shall be paid for the Close-out

Phase of the project after all certificates of completion, all sales tax affidavits, record ("as built") CAD, and other documents herein or by the Contract Documents required are delivered to the Owner. At that time, the contract shall be considered as having been fully performed by the Architect except for inspections and follow-up required during the one-year guarantee.

**B.3 FEE PAYMENT SCHEDULE CHART**

<u>Section</u>	<u>Project Phase</u>	<u>% of Fee</u>	<u>% Cumulative Fee</u>
B.2.2	Schematic Design	20%	20%
B.2.3	Design Development	20%	40%
B.2.4	Contract Documents	35%	75%
B.2.5	Bid/Award	2.5%	77.5%
B.2.6	Construction Observation	20%	97.5%
B.2.7	Close-out	2.5%	100%

**B.4 HOURLY RATE**

The hourly rates, set forth in Exhibit B-1, attached hereto, include salary, customary and mandatory benefits, overhead factors, and a profit.

**B.5 FEE PAYMENT PROCEDURES**

B.5.1 All requests for payment must be submitted to and will be processed and paid by the Owner in accordance with its procedures. Requests for payment will be submitted to the Owner on the Architect's letterhead in the form of an invoice. The Architect agrees to cooperate with the Owner in assembling all information necessary to file the form including, without limitation, back-up or supporting documentation. The Architect shall provide the Owner a completed Federal Form W-9 upon submission of the Architect's first invoice.

B.5.2 Assuming that the necessary information and documentation is timely submitted by the Architect to the Owner, it is anticipated that payments will be made monthly and within thirty (30) days of the time the monthly invoice is filed with Owner. Architect acknowledges and agrees that no interest shall be due or paid on late payments.

**EXHIBIT B-1**  
**HOURLY RATES**

**EXHIBIT C**

**DELIVERY SCHEDULE**

**C.1** Products and services set forth in this agreement shall be delivered in accordance with the following schedule:

	<u>Completion Date</u>
Schematic Design	<b>August 19, 2019 OR TBD upon mutual agreement of the parties</b>
Design Development	<b>November 25, 2019 OR TBD upon mutual agreement of the parties</b>
Construction Contract Documents	<b>February 17, 2020 OR TBD upon mutual agreement of the parties</b>
Bidding and Negotiating	<b>May 11, 2020 OR TBD upon mutual agreement of the parties</b>
Certificate of Final Completion	<b>July 5, 2021 OR TBD upon mutual agreement of the parties</b>
Record Documents	<b>45 calendar days from date of receipt of the as-builts from the Contractor</b>

**EXHIBIT D**  
**GENERAL CONTRACT CONDITIONS**

## **GENERAL CONTRACT CONDITIONS OF THE CONSTRUCTION AGREEMENT**

### **ARTICLE 1 CONTRACT DOCUMENTS AND DEFINITIONS**

All Work under the Construction Agreement shall be accomplished in accordance with the Contract Documents, which shall consist of the Request for Qualifications, Request for Proposals, Proposal(s), Notice of Award, Notice to Proceed, Performance Bond, Labor and Material Payment Bond, Construction Agreement, these General Contract Conditions, Supplementary Conditions, Drawings and Specifications, tests and engineering data, approved Change Orders, Contractor's Requests for Payment, Architect's Certificates, and all addenda issued by the Owner or Architect prior to execution of the Construction Agreement and all modifications issued by the Owner or Architect after execution of the Construction Agreement.

With respect to the Contract Documents, the following definitions and understandings shall control:

**1.01** "Architect" shall mean the corporation, partnership, firm, entity or individual named and designated as "architect" in the Construction Agreement, and any persons or entities acting on the Architect's behalf and within the scope of the particular duties properly entrusted to them in each case. In the event that there is no Architect on the Project, then "Architect" shall refer to Owner and its duly authorized representative.

**1.02** "Change Order" shall mean a written order to the Contractor signed by the Owner or its authorized agent issued after the execution of the Construction Agreement, authorizing a change in the Work and/or adjustment in the Guaranteed Maximum Price ("GMP") or the Contract amount, as applicable, or the contract time schedule. Each adjustment in the GMP or Contract amount resulting from a Change Order shall clearly separate the amount attributable to the Cost of the Work and the Contractor's Fee.

**1.03** "Construction Agreement" shall mean the [Construction Management/General Contractor Agreement][Construction Agreement] dated [Date] between the Owner and the Contractor.

**1.04** "Contract" or "Contract Documents" shall include all of the items enumerated in Article 1 above.

**1.05** "Contractor" or "CM/GC" shall mean the corporation, company, partnership, firm, entity, or individual named and designated as such in the Construction Agreement, and any persons or entities acting on its behalf.

**1.06** The "date of final completion" and "finally completed" shall mean the date when construction is certified by the Architect to be finally completed in accordance with the Contract Documents, as modified by any Change Orders processed under the terms of Article 27 below and when the Owner has fully accepted the Project for the use for which it was intended. Such date will be set forth on a letter of acceptance issued by the Owner.

**1.07** "Drawings" or "plans" shall mean all (a) drawings furnished by the Owner and/or

Architect as a basis for the award of Contract and for construction of the Project; (b) supplementary drawings furnished by the Owner and/or Architect to clarify and to define in greater detail the intent of the Contract drawings and specifications; (c) drawings submitted by the successful Contractor as may be required after the Contract is awarded; (d) drawings furnished by the Owner and/or Architect to the Contractor during the progress of the Work; and (e) engineering data and drawings submitted by the Contractor during the progress of the Work, provided such drawings are acceptable to the Architect.

**1.08** “Day” or “days” shall mean calendar days. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included.

**1.09** “Notice to Contractor” shall be deemed to have been duly served if communicated via email or by other electronic means to a member of the firm or to an officer of the corporation.

**1.10** “Owner” or “District” shall mean the Douglas County School District RE-1, and shall include the Superintendent of Schools and his duly authorized representatives or designees.

**1.11** “The Project” is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

**1.12** “Subcontractor” shall mean any corporation, partnership, firm, entity, or individual having a direct contract with the Contractor or another subcontractor for performing Work and/or furnishing labor or material on the Project covered by the Contract.

**1.13** “The Work” shall mean the construction and services required by the Contract Documents for completion of the Project, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations, whether on or off the Project site, and all labor, materials equipment and services provided or to be provided by subcontractors, sub-subcontractors, or any other entity for whom the Contractor is responsible.

**1.14** “Specifications” shall mean the written technical information concerning materials, components, systems, equipment, and manner of installation as indicated on the drawings or plans and which state the quality, performance, and characteristics to be achieved by application of construction methods.

**1.15** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use, including acceptance of all final inspections from Authorities Having Jurisdiction. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Such list may include site work that is best completed at a later date. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall

establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**1.16** “Notice of Award” shall mean the contractor has been awarded the project such that preconstruction work can commence.

**1.17** “Notice to Proceed” shall mean the Owner has reviewed and approved the contract and final contract amount, and all subcontractor contracts can be executed and construction work can start. Notice to Proceed will also include finalization of the GMP Amendment, Exhibit D.

## **ARTICLE 2 REFERENCE STANDARDS**

Reference to the standards of any technical society, organization, or association, or to codes of local or state authorities, shall mean the latest standard, code, specification, or tentative standard adopted and published as of the date of execution of the Construction Agreement, unless specifically stated otherwise.

## **ARTICLE 3 EXECUTION, ACKNOWLEDGEMENT, INTENT, AND INTERPRETATION OF CONTRACT DOCUMENTS**

**3.01** Execution. The Construction Agreement and other Contract Documents shall be signed in multiple copies as directed by the Owner. Within ten (10) days of Notice of Award, the Contractor shall submit to the Owner a minimum of one (1) fully executed original sets of the Construction Agreement. The date of the Contract for purposes of these documents shall be the date of the Notice of Award letter. The Owner shall execute the Construction Agreement, assemble all copies, and distribute the Contract Documents. The Contractor shall not commence the Work until it receives the Notice to Proceed. All bonds and insurance certificates shall be submitted to the Owner prior to the award of the first subcontract, after the Notice to Proceed.

**3.02** Acknowledgement. By executing the Construction Agreement, the Contractor acknowledges that it has visited the Project site, and familiarized itself with the local conditions under which the Work is to be performed.

**3.03** Intent. The intention of the Contract Documents is to include all labor and materials, tools, equipment, construction equipment, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work. Materials or Work described in words that, as applied, have a well-known technical or trade meaning shall be held to refer to such recognized meaning. The organization of the specifications into divisions, sections, and articles, as the case may be, and the arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade. It is intended that even though Work is not covered under any heading, division, section, article, branch, class, or

trade of the specifications, it shall nevertheless be supplied if it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results. The specifications and drawings are intended to supplement but not necessarily duplicate each other. Where a conflict occurs between or within Specifications and Drawings, the more stringent or higher quality requirements shall apply. Addenda and Modifications to the Construction Documents take precedence over the original Construction Documents. Should there be a conflict within the Specifications, or the Drawings, or between the Specifications and the Drawings, the Architect shall decide which stipulation will provide the best installation and the Architect's decision shall be final. In any event, if any error or disagreement in the Drawings and Specifications exist, or appear to exist, the Contractor shall not avail itself of such manifestly unintentional error or omission, but must have same explained or adjusted by the Architect before proceeding with the work in question. In the event of the Contractor's failure to give written notice, Contractor shall, at its own expense, make good any damage to or defect in the work caused by such omission. Any Work exhibited in the one and not in the other shall be executed as if it had been set forth in both, so that the Work will be constructed according to the complete design as determined by the Architect.

**3.04 Interpretation.** Should anything necessary for a clear understanding of the Work be omitted from the specifications and drawings, or should the requirements appear to be in conflict, the Contractor shall secure written interpretations or instructions from the Architect before proceeding with the Work affected thereby. The Contractor shall secure written interpretations or instructions by submitting a Request for Information to the Architect. Oral requests shall not be acknowledged by the Architect or Owner. Additional costs incurred by the Owner as a result of unnecessary requests made by the Contractor, as determined by the Owner, shall be the responsibility of the Contractor. It is understood and agreed that the Work shall be performed according to the true intent of the Contract Documents.

**3.05 Conflict in Interpretation.** In the case of discrepancy or in the event of a conflict between the different Contract Documents, the documents shall take precedence in the following order:

**3.05.01** Change Orders;

**3.05.02** Written Amendments to Construction Agreement (including, if applicable, the GMP);

**3.05.03** Construction Agreement;

**3.05.04** General Contract Conditions

**3.05.05** Drawings and specifications; and

**3.05.06** Bid Documents, including addenda.

Where two or more of the Contract Documents are complementary, the more detailed provision shall control over the more general provision.

**3.06** Oral Statements. It is understood and agreed that the written terms and provisions of the Contract Documents shall supersede all oral statements of the Owner, Architect, Contractor and their representatives, and that oral statements shall not be effective or be construed as being a part of this Contract.

**3.07** Time is of the Essence. All time limits stated in the Contract Documents are of the essence of the Contract.

**ARTICLE 4 ITEMS COVERED BY CONTRACT PRICE**

**4.01** Items Supplied by Owner. Owner shall supply the following items for the Project:

**4.01.01** Initial survey;

**4.01.02** Materials testing including soil testing;

**4.01.03** Third-party inspections;

**4.01.04** Commissioning; and

**4.01.05** Test and balance.

**4.02** Items Supplied by Contractor. Unless specifically stated otherwise, the Contractor shall accept the compensation stated in the Construction Agreement as full payment for furnishing all the materials, transportation, apparatus, temporary structures, equipment, services, fuel, energy, light, water, labor and tools, permits, and all other items necessary for the complete and proper execution of the Work contemplated by or reasonably implied from the Contract Documents, within the time limits indicated therein. Such amount shall include any loss or damage resulting from the nature of the Work, from the elements or from any unforeseen difficulties that may be encountered; all risks of every description connected with the prosecution of the Work; all expenses incurred in consequence of any suspension or discontinuance of the Work; and all other amounts necessary for completing the Work pursuant to the Contract Documents within the time limits indicated therein.

**ARTICLE 5 DRAWINGS AND SPECIFICATIONS**

**5.01** Copies Furnished. Unless otherwise provided in the Contract Documents, the Contractor shall be furnished, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the Work.

**5.02** Ownership of Drawings. All drawings, specifications, and copies thereof furnished by the Architect are the property of the Architect and the Owner, whether or not the Work for which they are made is performed, and are not to be used on other Work except by written agreement with the Architect and the Owner.

**5.03** Figured Dimensions to Govern. Dimensions and datum elevations shown on the drawings shall be accurately followed. No Work shown on the drawings, the dimensions of which are

not indicated, shall be executed until necessary dimensions have been obtained from the Architect.

**5.04** Drawings and Specifications Available on the Site. The Contractor shall maintain at the Project site for the Owner and the Architect one electronic copy of all drawings containing the engineer's/Architect's stamp, including addenda, approved shop drawings, Change Orders, and other modifications, with all changes or deviations from the original drawings neatly marked thereon in a contrasting color. The Contractor shall also keep on the Project site, or readily accessible via electronic means, all applicable standards, codes, and manufacturer's or other specifications referenced in the Contract Documents. The drawings, marked to record all changes made during construction, shall be delivered to the Architect for the Owner upon completion of the Work. The Contractor shall also maintain a Project record set of specifications at the Project site, noting therein by appropriate section the names, models, and other distinguishing characteristics of the materials actually incorporated into the Work. This Project record set of drawings and specifications shall be updated daily as the Project progresses and shall be made available to the Owner and Architect for inspection at all times. Upon final completion of the Work and before final payment, one (1) hard copy and one (1) electronic copy in the file format of the Owner's preference of this Project's record set of drawings and specifications shall be delivered to the Owner free of charge. One (1) electronic copy of this Project record set of drawings and specification shall be delivered to the Architect.

**5.05** Contractor to Check Drawings and Schedules. Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional. The Contractor shall notify the Architect of any discrepancy between the drawings and the conditions on the ground, or any error or omission in drawings, or in the layout as given by stakes, points, or instructions that it may discover. Before ordering any material or doing any Work, the Contractor shall verify all measurements concerning the Project and shall be responsible for the correctness of same. No extra charge or compensation shall be allowed on account of any difference between actual dimensions and the measurements indicated on the drawings. Any difference that may be found shall be submitted to the Architect for consideration and written determination before proceeding with the Work. The Contractor shall not be allowed to take advantage of any error or omission in the drawings or Contract Documents. Full written instructions shall be furnished by the Architect should such error or omission be discovered, and the Contractor shall carry out such instructions as if originally specified.

**5.06** Detail Drawings and Instructions. The Architect 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. The Work shall be executed in conformity with the Architect's drawings and instructions, and the Contractor shall do no Work without proper drawings and instructions.

**5.07** 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. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but if the Contractor observes that the drawings and specifications are at variance therewith, it shall promptly notify the Architect in writing, and any necessary adjustments shall be made 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, or regulations without giving the required written notice to the Architect and receiving a written directive to proceed, it shall bear all costs arising therefrom and to correct and/or remedy same.

## **ARTICLE 6 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

**6.01** Shop Drawings. "Shop drawings" are drawings, diagrams, illustrations, schedules, performance charts, brochures, manufacturer's literature, and other data that are prepared by the Contractor or any subcontractor, manufacturer, supplier, or distributor, and that illustrate some portion of the Work. Shop drawings shall be submitted in both hard copy and electronic format in a file format of the Owner's preference.

**6.02** Samples. "Samples" are physical examples furnished by the Contractor to the Owner and/or Architect to illustrate materials, finishes, equipment, or Workmanship, and to establish standards by which the Work will be judged.

**6.03** Product Data. "Product data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Product data shall be submitted in both hard copy and electronic format in a file format of the Owner's preference.

**6.04** Contractor's Obligations. The Contractor shall review, approve, stamp and then submit to the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents with reasonable promptness and in such a sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Shop drawings, product data, samples, and similar submittals required by the Contract Documents shall properly identify specified items. At the time of submission, the Contractor shall inform the Architect in writing of any known deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents. Substitutions will be allowed only in accordance with the provisions of Article 19. The number of copies and format of submittal shall be as required by the Architect, but, at a minimum, shall include one (1) electronic copy in a file format of the Owner's preference of the original shop drawings and product data for the Owner.

**6.04.01** The Contractor shall also require each subcontractor to prepare and transmit

sufficient copies of all shop drawings that are specially drawn for the Project, including detailed fabrication and erection drawings, setting drawings, diagrammatic drawings, material schedules, and samples to the Contractor to meet the Project construction schedule and the subcontractors' contract schedule, or shall present, in writing, valid reasons for any delay.

**6.04.02** All shop drawings for all equipment in a given system shall be submitted at one time. Complete maintenance/warranty data are to be submitted to the Contractor and Architect for review and for submission to the Owner at the completion of the Work and prior to final settlement.

**6.04.03** Each sheet of shop drawings shall identify the Project, subcontractor, and fabricator or manufacturer, and the date of the drawings. All shop drawings shall be numbered in sequence and each sheet shall indicate the total number of sheets in the set.

**6.04.04** The shop drawings shall indicate types, gauges, and finish of all materials. Where a shop coat of paint is required, its brand name, manufacturer's identification number, and type shall be indicated. Sufficient data in each set of shop drawings shall be included to permit a detailed study of the system submitted and its conformance to the Contract Documents and design intent.

**6.04.05** The Contractor shall review, approve, stamp, and then submit the copies, prints of shop drawings, and samples to the Architect for approval, with copies to the Owner. After review, the Architect shall have prints made for its own use and shall then return the copies to the Contractor with the Architect's appropriate comments. Those returned for correction shall be corrected and resubmitted. Upon receiving the approved sets from the Architect, the Contractor shall make requested sets of prints for distribution to appropriate subcontractors, fabricators, manufacturers, and suppliers who require them for coordination of their Work.

**6.05** Verification. By approving and submitting shop drawings, product data, and samples, the Contractor thereby represents that it has verified all field measurements, field construction criteria, dimensions, elevations, quantities, materials, catalog numbers, and similar data, as shown on the drawings and specifications furnished by the Architect, or will do so, and that it has checked and coordinated each shop drawing, product data, and sample with the requirements of the Work and of the Contract Documents.

**6.06** Architect Review. The Architect shall review and approve shop drawings, product data, and samples with reasonable promptness so as to cause no delay, but only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Architect's approval of a separate item shall not indicate approval of any assembly in which the item functions. Upon the final completion of the Work, the Contractor shall furnish to the Architect electronic copies of all shop or setting drawings showing the as-built condition of the Work. The Architect, after review, shall submit an electronic copy to the Owner in a file format of the Owner's preference.

**6.07** Corrections. The Contractor shall make any corrections required by the Architect and shall resubmit the required number of corrected copies of shop drawings or new samples until approved

by the Architect. The Contractor shall direct specific attention in a separate writing or on resubmitted shop drawings to revisions other than the corrections requested by the Architect on previous submissions.

**6.08** Contractor's Responsibility. The Architect's approval of shop drawings, product data, or samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval of the specific deviation. The Architect's approval shall also not relieve the Contractor from responsibility for errors or omissions in the shop drawings, product data, or samples.

**6.09** Architect Approval Required. No portion of the Work requiring the submission of a shop drawing, product data, or sample shall be commenced until such submittal has been approved in writing by the Architect. All such portions of the Work shall be in accordance with approved shop drawings, product data, and samples. All material finishes and samples shall be approved at one time. The Contractor shall submit all items requiring approval of finishes, color, material, etc., with sufficient lead time to allow simultaneous consideration and preparation of complete finish color schedule. No approvals of single items shall be considered.

**6.10** Copies to Owner. When shop drawings, product data, samples or similar submittals have been approved and stamped by both Contractor and Architect, Contractor shall immediately forward a copy of each to the Owner in a file format of the Owner's preference.

## **ARTICLE 7 ROYALTIES AND PATENTS**

The Contractor shall pay all royalties and license fees. The Contractor's work product, including without limitation, Contractor's notes, memoranda, photographs, spreadsheets, data, designs, plans, drawings, submittals, redlines and revisions made thereto, and any other documents produced throughout the Project (collectively "Work Product"), shall be delivered to the Owner within the time frame(s) contemplated by the Construction Agreement or at the latest upon the date of final completion or termination of the Contract, shall become the property of the Owner, and may be used by the Owner for any purpose. The Contractor shall defend all suits or claims for infringement of any alleged patent rights, copyright, or trade secrets arising out of Owner's ownership or use of Contractor's Work Product and shall indemnify and hold harmless the Owner from any and all liability or loss on account thereof and shall pay any judgments or fees resulting therefrom, including, but not limited to, royalties, license fees, and attorneys' fees. If the Contractor has information that the process or article specified involves the infringement of a patent, it shall be responsible for any and all liability or loss resulting therefrom unless it promptly furnishes such information to the Architect in writing.

## **ARTICLE 8 MATERIALS, LABOR, FACILITIES, AND STORAGE**

**8.01** Contractor's Responsibility. Unless otherwise agreed in writing, the Contractor shall provide and pay for all materials, labor, tools, equipment, machinery, transportation, and other facilities necessary for the proper execution and completion of the Work. The Contractor shall provide and pay

for all the temporary facilities required to supply all the power, light, water, and heat needed by it and its subcontractors for their Work and shall install and maintain all such facilities in such manner as to protect the public and workers and to conform with any applicable laws and regulations. If temporary heat and/or protection is required for the expeditious prosecution of the Work and before the permanent heating apparatus is available for use, the temporary heating apparatus shall be installed and operated in such a manner that the finish Work and/or construction will not be damaged thereby. Unless otherwise specified, the Contractor shall pay for all the power, light, and water used by it and its subcontractors, without regard to whether such items are metered by temporary or permanent meters. The cutoff date on permanent meters shall be either the agreed date of full occupancy by the Owner or the date of final acceptance of the Project, whichever shall be the earlier date. Upon completion of the Work, the Contractor shall remove all such temporary facilities from the Project site.

**8.02** Materials. Unless otherwise specified, all materials shall be new and both Workmanship and materials shall be of the highest quality per the contract specifications. The Contractor shall furnish satisfactory evidence to the Owner as to the kind and quality of materials. Samples shall be furnished, when specified, and the Work shall be in accordance with those samples that have been approved.

**8.03** Toilet Facilities. The Contractor shall provide and maintain, in a neat and sanitary condition, adequate temporary toilet facilities for the use of any and all employees engaged on the Work, in strict compliance with the requirements of all applicable codes, regulations, laws, and ordinances. In no event may present toilet facilities of any existing building at the site of the Work be used by employees of the Contractor or its subcontractors. Upon final completion of the Work, the Contractor shall remove all such temporary toilet facilities from the site and restore to original conditions.

**8.04** Facilities and Storage. The Contractor shall provide suitable temporary facilities and quarters for workers, as needed, and shall maintain on premises water-tight storage sheds or tool houses for storage of building materials and tools that could be damaged by weather. The Contractor shall allow space for the erection of sheds and provide similar facilities for storage by subcontractors of their materials and tools. Storage of materials shall be confined to the site. These facilities or quarters shall further provide for protection against theft and damage of building materials and tools. Upon final completion of the Work, the Contractor shall remove all such temporary facilities from the site.

**8.05** Office Space. If directed by the Owner, the Contractor shall provide adequate, weatherproofed, heated, ventilated, and well-lighted office space at the site of the Work, for use by the Architect and the Owner and their representatives.

**8.06** Quality and Location of Facilities. All of the foregoing facilities shall be of a level of quality and placed in locations acceptable to the Architect and the Owner.

## **ARTICLE 9      PERFORMANCE AND PAYMENT BONDS**

**9.01** Required Bonds. The Contractor shall, within ten (10) days from the Notice to Proceed furnish bonds to the Owner in the full amount of the contract price, covering both the faithful

performance of the Contract and the payment of all obligations for labor and materials arising thereunder, on such designated forms as the Owner may prescribe and with such sureties as it may approve. Bonds shall remain in effect for the duration of the Contractor's obligations under this Contract. The amount of the bonds shall be increased, if necessary, to reflect approved changes in the Work that result in an increase in the total cost of the Work plus the Contractor's fees. Such bonds shall be duly executed by a qualified surety licensed to do business in the State of Colorado, conditioned upon the true and faithful performance of the Contract, and shall provide that if the Contractor or its subcontractors fail to duly pay for any labor, materials, or other supplies used or consumed by such Contractor or its subcontractors in the performance of the Work contracted to be done, the surety will pay the same in an amount not exceeding the sum specified in the bond, as adjusted by approved Change Orders, and together with interest as provided by law. The performance bond shall additionally guarantee that the Contractor shall remedy any omissions, correct any and all defects, and adjust and make operable all component parts of Work falling under the requirements of the Contract that may be called to the Contractor's attention within a period of twelve (12) months following the date of the letter of acceptance.

**9.02** Additional Bond Requirements. The premium for all bonds shall be paid by the Contractor and included in the bid price in the bid proposal. The Owner will accept and approve bonds written by sureties legally authorized to write such bonds in the State of Colorado, provided such surety companies are rated in Best's Insurance Guide (latest edition), not lower than A- or have Best's Financial Rating of at least X. If, at any time a surety on such a bond becomes irresponsible or loses its right to do business in the State of Colorado, new bonds shall be provided by an alternate surety licensed to do business in the State and meeting the requirements of this Article 9.

## **ARTICLE 10**     **INSURANCE**

**10.01** Coverages and Limits of Insurance. The Contractor and subcontractors, at their expense, shall procure and maintain in effect at all times throughout the duration of the Project, including the one-year warranty period, all insurance requirements and limits as set forth below. The Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of the Contract. All below insurance policies shall include a provision preventing cancellation without thirty (30) days' prior notice by certified mail. Completed certificates of insurance shall be filed with the Owner within ten (10) days after the date of the Notice to Proceed. Such certificates shall specifically state the inclusion of the coverages and the provisions set forth herein and shall state whether the coverage is "claims made" or "per occurrence". If the coverage is written on a "claims made" basis, Contractor shall confirm that any retroactive date for the coverage precedes the effective date of the Construction Agreement and is in effect for a period of three (3) years from the date of final acceptance of the Work.

**10.01.01**     Workers' Compensation Insurance. The Contractor shall procure and maintain workers' compensation insurance at its own expense during the term of the Construction Agreement, including occupational disease provisions for all employees per statutory requirements.

Such policy shall contain a waiver of subrogation in favor of the Owner. The Contractor 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 Contractor accepts full liability and responsibility for subcontractors' 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 Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

**10.01.02**      Commercial General Liability Insurance. The Contractor, at its own expense, shall procure and maintain commercial general liability insurance to protect the Contractor 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 Contractor or by any subcontractor under it or anyone directly or indirectly employed by the Contractor or by a subcontractor.

**10.01.02.01**      All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form:

[Coverage limits shall be a function of project amount.]

<u>Contract Value</u>	<u>Per Occurrence</u>	<u>General Aggregate</u>
Less than \$1,000,000	\$1,000,000	\$2,000,000
\$1,000,000 to \$4,999,999	\$2,000,000	\$4,000,000
\$5,000,000 to \$9,999,999	\$3,000,000	\$6,000,000
\$10,000,000 to \$24,999,999	\$5,000,000 (minimum)	
\$25,000,000 and above	\$10,000,000 (minimum)	

[Coverage limits shall be a function of the project amount.]

**10.01.02.02**      The following coverages shall be included in the Commercial General Liability Insurance

(a)      Per project general aggregate (CG 25 03 or similar)

(b)      Owner, its subsidiary, parent, associated and/or affiliated entities, successors or assigns, its elected officials, trustees, employees, agents, and volunteers shall be named as Additional Insureds with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractors, including completed operations, and must include both ONGOING Operations and COMPLETED Operations per CG2010 10/01 and CG 203710/01 or equivalent as permitted by law.

(c) The policy shall be endorsed to be primary and non-contributory with any insurance maintained by Additional Insureds.

(d) Additional Insured – Owners, Lessees or Contractors Endorsement (ISO Form 2010 2004 edition or equivalent).

(e) Additional Insured – Owners, Lessees or Contractors Endorsement (ISO CG 2037 20014 edition or equivalent).

(f) A waiver of subrogation in favor of all Additional Insured parties.

(g) Personal/Advertising Injury Liability.

(h) Contractual Liability coverage to support Contractor's indemnification obligations.

(i) Explosion, collapse and underground (xcu).

(j) Independent contractors

(k) Products/Completed Operations

(l) Premises and Operations

(m) Designated Construction Projects General Aggregate Limit (ISO CG 2503-1997 edition or equivalent).

**10.01.02.03** The following exclusionary endorsements are prohibited in the Commercial General Liability Insurance policy:

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

(b) Contractual Liability Coverage Exclusion modifying or deleting the definition of an "insured contract" from the unaltered SO CG 0001 1001 policy from (CG 2426 or similar)

**10.01.02.04** The Contractor shall maintain general liability coverage including Products and Completed Operations insurance, and the Additional Insured with primary and non-contributory coverage as specified in the Contract for three (3) years after completion of the Project.

**10.01.03** Comprehensive Automobile Liability Insurance. The Contractor shall maintain comprehensive automobile liability insurance, including coverage for liability arising out of any auto (including owned, hired, and non-owned autos), with a combined single limit of \$1,000,000/person, \$1,000,000/accident, and \$1,000,000/property damage. Such insurance shall

include a waiver of subrogation in favor of the Owner.

**10.01.04** Umbrella Liability Insurance. The Contractor shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section 10.01.02 above. Coverage shall follow the terms of the underlying insurance, including the additional insured and waiver of subrogation provisions. The amounts of insurance required above may be satisfied by the Contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned.

Each occurrence	\$2,000,000
Aggregate	\$2,000,000

**10.01.05** Builder's Risk Insurance. The Contractor shall purchase and maintain, from a company or companies lawfully authorized to do business in Colorado, Builder's Risk insurance or equivalent policy form in the amount of the initial contract sum, plus the value of subsequent contract modifications, change orders, and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such Builder's Risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Substantial Completion or until no person or entity other than the Owner has an insurable interest in the property, or whichever is later. This insurance shall include interests of the Owner, the Contractor, subcontractors and subsubcontractors in the Project as named insureds. All associated deductibles shall be the responsibility of the Contractor. Such policy may have a deductible clause but not to exceed ten thousand dollars (\$10,000.00). Builder's Risk insurance shall be on a special cause of loss form and shall include, without limitation, insurance against the perils of fire (with extended coverage), transit, increased cost of construction, architect's fees and expenses and all below and above ground structures, piping, foundations including underground water and sewer mains including the ground on which the structure rests, excavation, backfilling, filling and grading, and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (including water damage), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Such Builder's Risk insurance shall include equipment breakdown coverage (aka boiler and machinery) which shall specifically cover insured equipment during installation and testing (including cold and hot testing) and such insurance must provide coverage from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site. Contractor shall maintain Builders Risk coverage including partial use by Owner during construction. Contractor will take reasonable steps to obtain consent of the Builders Risk carrier to delete any provisions with regard to restrictions within any Occupancy Clause within the Builders Risk Policy. The

Builders Risk policy will remain in force until the Date of Substantial Completion. The Contractor shall waive all rights of subrogation as regards the Owner, its officials, officers, agents and employees, all while acting within the scope and course of their employment for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The Contractor shall require all subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts. Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried. The Owner shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.

**10.01.06**      Professional Liability Insurance. Contractor shall maintain professional liability insurance covering wrongful acts, errors and/or omissions, including design errors, if applicable for damage sustained by reason of or in the course of operations under this Contract resulting from professional services provided by the Contractor as part of this Contract. The policy coverages shall be amended to provide that coverage shall apply for three (3) years after project is complete. The policy is to be on a primary basis if other professional coverage is carried. Minimum coverage shall be in the amount of \$1,000,000 per loss and \$2,000,000 aggregate.

**10.01.07**      Contractor’s Pollution Liability. If work at issue under this Contract involves potential pollution risk to the environment or losses caused by pollution conditions (including asbestos) that may arise from the operations of the Contractor described in the Contractor’s scope of services, Contractor shall obtain a pollution liability insurance policy covering the Contractor’s completed operations. Coverage shall apply to sudden and gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Construction Agreement; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this Contract is completed. The policy shall be endorsed to include the following as Additional Insureds: “Owner, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations”. The policy shall have the following minimum limits:

Per Loss	\$1,000,000
Aggregate	\$2,000,000

**10.02** Immunity. The parties understand and agree that the Owner does not waive or intend to waive any provision of the Contract, including the provisions of this Article; the monetary limitations of the Contract; or any of the rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as from time to time amended, or otherwise available to the Owner.

**10.03** Additional Miscellaneous Insurance Provisions. Certificates of insurance and/or insurance policies required under the Contract shall be subject to the following stipulations and additional requirements:

**10.03.01** Any and all deductibles or self-insured retentions contained in any insurance policy shall be assumed by and at the sole risk of the Contractor;

**10.03.02** If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Contractor shall promptly obtain a new policy, submit the same to the Owner and State Building Programs for approval if requested, and submit a certificate of insurance as hereinbefore provided. Upon failure of the Contractor to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the Owner, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification;

**10.03.03** All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to the Owner; and

**10.03.04** Receipt, review or acceptance by the Owner of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Contractor from its obligation to meet the insurance requirements contained in these General Contract Conditions.

**10.03.05** The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Owner in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the Work under this Contract by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

## **ARTICLE 11     PROJECT SIGN**

If directed by Owner, Contractor shall provide and install Project signs at the Project site. Except as approved by Owner no advertising or signage shall be permitted on the Project site.

## **ARTICLE 12     PERMITS AND COMPLIANCE WITH STATUTES, RULES, AND REGULATIONS**

**12.01** Permits. Contractor shall secure any local and state permits, governmental fees, licenses, and inspections necessary for the proper execution and completion of the Work that are customarily secured after execution of the Construction Agreement and legally required at the time bids are received or negotiations concluded. Owner will reimburse contractor for permit costs via change order. Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified in writing. The Contractor shall provide and pay all temporary utilities required for execution of the Work up to Substantial Completion. The Owner and Architect shall negotiate and provide for all electrical, gas, water, and sewer mains for the Contractor's connections. The Contractor shall arrange with the utility company for actual connection, make necessary connections, and pay for all associated inspection fees and permits as required by any government agency. In addition, the Contractor shall furnish all material and items required to complete all connections. The Contractor shall call for all inspections on a timely basis by any agency having jurisdiction over the Work.

**12.02** Compliance with Statutes, Rules and Regulations. The Contractor and all subcontractors shall comply with all applicable federal and state statutes, rules, regulations, and directives of the State Division of Fire Prevention and Control, and any other governmental body having jurisdiction over the work to be performed. If any of the provisions of the Contract Documents are in conflict therewith, such portions shall be considered stricken and the applicable statute, ordinance, regulation, or ruling substituted therefor. All such cases of apparent conflict coming to the attention of any party shall immediately be called to the attention of the Owner. The Contractor shall strictly observe and comply with all federal and state laws pertaining to the employment and payment of labor.

## **ARTICLE 13     SURVEYS, BENCHMARKS, MONUMENTS, STAKES, AND MEASUREMENTS**

**13.01** Surveys. As provided by the Owner, the Contractor shall obtain from the Architect a copy of all surveys describing property lines, elevation benchmarks, physical characteristics, and utility locations.

**13.02** Soil Test Report. The Owner may arrange for a separate consultant to conduct field and laboratory soil investigations on the Project site and to prepare a report of its findings. Such a report, if prepared, shall be available for review by the Contractor upon request. Such data is offered solely for reference and is not to be considered a part of the Contract Documents. The data contained in any such document prepared for the Owner by a separate consultant is believed to be reliable; however, the Owner and Architect do not guarantee its accuracy or completeness. All applicable subcontractors shall be fully familiar with the contents of such reports, if prepared, and shall consider and evaluate them in the performance of their contracts and the Work.

**13.03 Benchmarks.** The Contractor shall properly stake out the Work and provide and rigidly set benchmarks and equipment necessary for the proper performance of the Work. The Contractor shall remain responsible for their maintenance and their accuracy. A permanent benchmark, approved as to location and type by the Architect, from which all grades are to be taken, shall be established near the site of the Work by the Contractor. From this benchmark the Contractor shall ascertain all grades and levels to Project buildings as needed. The Contract Documents shall include all necessary information to establish the benchmark.

**13.04 Preservation of Monuments and Stakes.** The Contractor shall carefully preserve all monuments, benchmarks, property markers, reference points, and stakes. In case of the destruction thereof, the Contractor shall be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments and/or benchmarks that must be removed or disturbed shall be protected until properly referenced for relocation. The Contractor shall furnish all materials, labor and assistance for the proper replacement of such monuments and benchmarks.

**13.05 Measurements.** Before ordering any material or performing any Work, the Contractor shall verify all measurements on the Project and shall be responsible for the accuracy of same. No extra charge or compensation shall be allowed because of any difference between actual dimensions and the measurements indicated in the drawings or specifications. Any discrepancies shall be submitted in writing to the Architect and Owner for consideration before proceeding with the Work.

#### **ARTICLE 14      CHANGED CONDITIONS**

The Contractor shall promptly, and before such conditions are disturbed, notify the Owner and the Architect in writing of: (a) sub-surface or latent physical conditions at the Project site differing materially from those indicated in the Contract Documents, or (b) unknown physical conditions at the Project site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents. The Owner and the Architect shall promptly investigate the conditions, and if the Owner finds that such conditions do so materially differ and cause an increase or decrease in the cost of or the time required for performance of the Work, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless it has given notice as required.

#### **ARTICLE 15      PROTECTION OF PERSONS, WORK AND PROPERTY**

**15.01 Building Exits and Barricades.** During the course of construction, the Contractor shall keep all required building exits free and unobstructed. Such exits shall not be closed at any time for any reason while the building is occupied or at any time when the building is unoccupied, except after written approval is given by the Owner and proper warning and directional signs are posted. Barricades shall be erected so that traffic is separated and protected from the construction.

**15.02 Precautions.** The Contractor shall take all necessary precautions to ensure the safety of all employees and other persons on the Project or who may be affected by the Contractor's Work

thereon. The Contractor shall also take all necessary precautions to protect the Work and all temporary facilities, as well as materials, tools, and equipment incorporated therein or to be incorporated therein from damage or destruction, whether in storage on or off the Project site and whether in the custody or control of the Contractor or any of its subcontractors. The Contractor shall also take all necessary precautions to protect all property at the Project site and adjacent thereto not designated for removal, relocation or replacement, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities.

**15.03 OSHA Compliance.** The Contractor and its Subcontractors shall comply with all applicable provisions of the Occupational Safety and Health Administration (“OSHA”), 29 U.S.C. § 651, *et seq.*, and all laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction to protect the safety of employees and/or other persons who may be affected by the Work at no extra cost to Owner. The Contractor shall erect and maintain all necessary safeguards to protect workers on the Project site and the owners and users of adjacent property, and shall post danger signs and other warnings against hazards created by the Work including but not limited to protruding nails, re-bar, hoists, well holes, elevator shafts, hatchways, scaffolding, window openings, stairways, excavations, and falling materials. The Contractor shall designate a responsible employee at the Project site as a safety officer to ensure the Contractor’s compliance with this section. Said employee shall be the Contractor’s superintendent unless otherwise designated in writing by the Contractor to the Owner and the Architect. Contractor and its Subcontractors shall notify the Owner immediately of the incident or injury and shall investigate, compile and provide to Owner all relevant information within 24 (twenty-four) hours after occurrence on District-provided forms, if applicable. Contractor shall develop corrective actions for incident and injury prevention and timely report same to the District. Contractor agrees to perform Post Accident/Incident drug and alcohol testing. The expense of testing shall be borne by the Contractor at no additional cost to the Owner. The results of said testing will be provided to the Owner as part of the incident/injury report.

**15.04 Contractor’s Liability.** The Contractor shall be liable for all injury, damage or loss to any person or property caused in whole or in part by the Contractor, any of its subcontractors, or any person employed by or under the direction of the Contractor or any of its subcontractors. To the extent possible and unless otherwise directed by the Owner or Architect, the Contractor shall promptly repair, pay for or otherwise remedy any such injury, damage or loss and shall indemnify and hold harmless the Owner against any and all liability, claims, damages, losses and expenses arising therefrom. The terms of this section shall not apply in the case of injury, damage or loss proximately caused by the acts or omissions of the Owner and/or Architect and not attributable to any fault or negligence of the Contractor.

**15.05 Emergencies.** In the event of an emergency that threatens the safety or life of any person or threatens to damage or destroy the Project and/or any Work, materials, equipment or property thereon or to be used thereon, the Contractor shall act at its discretion to prevent such injury, death, damage or destruction. The Contractor shall immediately notify the Owner and Architect in writing of any such emergency and any action taken by the Contractor in response thereto. Any compensation due the Contractor for such emergency action shall be determined by agreement of the

Contractor, Owner and Architect, and an appropriate Change Order shall be issued therefor.

**15.06** Contractor's Prohibited Articles and Actions on Owner's Property. The Contractor and its subcontractors shall comply with the following District prohibitions and obligations:

**15.06.01** Prohibited Articles. Firearms, explosives, fireworks, shall not be allowed on Owner's Property: Pursuant to the Gun-Free School Zones Act, (18 U.S.C. §§ 921(a) (25, 26), 922(q) (1), it is unlawful for anyone to knowingly possess firearms in school zones.

**15.06.02** Harassment Policy. Owner prohibits verbal and/or sexual harassment of students, faculty, personnel and general public on its property. Owner reserves the right to ban offenders of this policy from all Owner premises.

**15.06.03** Sex Offenders. Pursuant to C.R.S. § 16-22-110, Public's Right to Know of Registered Sex Offenders, Owner reserves the right to investigate the status of any Contractor and/or Subcontractor personnel with respect to Colorado Sex Offender Registry.

**15.06.04** Criminal Background Checks. Contractor shall complete a criminal background check on all employees and Subcontractor and Subcontractor's employees who work under the Construction Agreement and who will have regular but not incidental contact with, or who will work in immediate proximity to, students on the premises of an Owner's school building. Contractor shall maintain records of such background checks during the term of the Construction Agreement. Those employees who have been convicted of, pled no contest to, or received a deferred sentence or deferred prosecution for any unlawful sexual behavior or crime of violence involving a child will not be allowed to work on any Owner school campus, with or in immediate proximity to Owner staff or students, or have access to Owner information. Contractor shall provide proof of background checks upon request by the Owner. Contractor will be responsible for following all federal, state, and local privacy and confidentiality requirements in performing background checks.

**15.06.05** Notice. Contractor is obligated to notify all workers, vendors and employees associated with their work on the Project of the above policies and prohibitions. Contractor must conduct a site specific orientation for such persons, as defined below. Any worker, vendor or employee that is engaged in an illegal act, refuses to submit to a search of property or person; or refuses, delays, is uncooperative with, or alters a urine and/or blood analysis shall be immediately removed from Owner property and the Project and shall be prohibited from re-entering Owner premises.

**15.07** Record Keeping. Contractor agrees to produce, maintain, and store on the Project site, all safety-related reports and records. Such documentation shall be produced by Contractor to Owner upon request. All such records shall be made accessible to governmental authorities upon request.

## **ARTICLE 16 WORK ON EXISTING BUILDINGS**

**16.01** Protection of Occupants. In addition to all other requirements of the Contract Documents, if the Work involves an addition or alteration to an existing building, the Contractor shall erect and maintain during the progress of the Work suitable dustproof partitions to protect such

building and the occupants thereof. If necessary, in the Owner's or Contractor's judgment or pursuant to manufacturer's directives or recommendations in order to protect occupants from noxious fumes, odors, or hazardous substances, the Contractor may be required to provide additional ventilation and/or work different or extended hours to avoid disruption to other activities within the existing building. Contractor shall protect and keep from harm all occupants of an existing building from construction activities, and shall include a safe pathway into and out of the school and related facilities and maintain all required exits.

**16.02 Partitions and Scheduling.** If any portions of an existing building are to be remodeled or repaired, such portions shall be adequately partitioned off with dustproof partitions and well ventilated. All remodeling Work shall be scheduled and submitted to the Owner and Architect for approval. The various contractors shall schedule their Work jointly, in order that each may accomplish its Work within such existing building in an orderly fashion during regular school vacation periods where possible, or in such a manner as to permit full use of the building and without impairment of any existing facilities.

**16.03 Existing Systems.** Existing building systems, such as fire alarm, temperature controls and air distribution, security systems, public announcement systems, irrigation systems, and the like, shall be demonstrated and noted by Owner to the Contractor as operational prior to Contractor's commencing the Work and Contractor may participate in observation of such systems. Such systems are the responsibility of the Contractor to maintain in pre-construction condition.

## **ARTICLE 17     CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION**

**17.01 Superintendent.** During the progress of the Work, the Contractor shall ensure that a competent superintendent and any necessary assistants, all satisfactory to the Architect and the Owner, are on the Project site at all times while Work is in progress. The superintendent shall not be changed by the Contractor except with the written consent of the Architect and the Owner, unless the superintendent ceases to be in the Contractor's employ. The superintendent shall represent the Contractor on the Project and all directions given to him/her shall be as binding as if given to the Contractor. The Architect and the Owner shall not be responsible for the acts or omissions of the superintendent or his/her assistants.

**17.02 Supervision.** If directed by the Owner, the Contractor shall provide full-time, qualified, and efficient supervision of the Work, using competent skill and attention. The Contractor is responsible for determining and supervising all temporary and permanent erection and construction sequences, techniques, means, or methods. The Contractor shall direct, schedule, and coordinate the Work to ensure that all parts fit together properly and in accordance with the Contract Documents. The Contractor shall carefully study and compare all Contract Documents and other instructions and shall at once report in writing to the Architect and the Owner any error, inconsistency, or omission that Contractor may discover.

**17.03 Additional Supervision Duties.** The Contractor shall see that the Work is carried out in accordance with the Contract Documents and in a thorough and first-class workmanlike manner in every respect. The Contractor shall provide engineering, surveying, and coordination to accurately establish

all lines, levels, and marks necessary to facilitate the operations of all parties involved in the Contractor's Work. The Contractor shall lay out the Work in a manner satisfactory to the Architect, making permanent records of all lines and levels required for excavation, grading, and foundations, and for all other parts of the Work. The Contractor shall be responsible for the commencement and the proper completion of the various stages and sequences of construction. The Contractor shall strictly adhere to the approved construction schedule.

## **ARTICLE 18     EMPLOYEES**

**18.01   Qualifications.** The Contractor and its subcontractors shall at all times enforce strict discipline and good order among their employees, and shall not employ any persons on the Project considered by the Architect or the Owner to be unfit or not skilled in the work assigned to them. The Contractor shall also keep its employees and those of its subcontractors from socializing on the Project site before and after working hours and from fraternizing at any time with staff, students, parents, and other persons who are at the school or the Project site.

**18.02   Drug- and Tobacco-Free Zone.** The Owner's properties and buildings are drug-free zones and tobacco-free zones. In furtherance of this standard, the Contractor shall establish and maintain a safe and efficient work environment for all its employees, free from the effects of alcohol, controlled substances, and illegal drugs. The use of tobacco products on school grounds is prohibited. The manufacture, distribution, dispensing, possession, or use of alcohol, controlled substances, and illegal drugs is prohibited on or adjacent to the Project site and all of the Owner's other property at all times. Illegal drug use is the use of illegal drugs and the abuse of alcohol and other drugs, including anabolic steroids. Controlled substances are drugs specifically identified and regulated under state and/or federal law and include but are not limited to opiates, narcotics, cocaine, amphetamines and other stimulants, depressants, hallucinogenic substances, and marijuana. The Contractor shall strictly enforce this prohibition among its own employees and its subcontractors and their employees while they are on Owner's property. The Contractor and subcontractors shall require all of their employees to undergo drug and alcohol testing if an employee is involved in an accident on the Project site that may have been caused by human error that could be drug- or alcohol-related, or when a supervisor has reasonable suspicion or notice that an employee shows signs of possible intoxication, use, or being under the influence of drugs, alcohol, or controlled substances. Employees who violate these prohibitions shall be subject to disciplinary action by their employers up to and including termination, and may be denied access to the Project site. Violation of this provision shall also constitute sufficient grounds for termination of the Contract or any subcontract by the Owner and payment by Contractor of any damages or penalties to the Owner.

**18.03   Equal Employment.** During the performance of this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of religion, race, creed, color, sex, sexual orientation, national origin, disability, age or other protected status. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their religion, race, creed, color, sex, sexual orientation, national origin, disability, age or other legally protected status. Such action shall include, but not be limited to,

employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; 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 setting forth the provisions of this nondiscrimination clause. The Contractor shall state, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to religion, race, creed, color, sex, sexual orientation, national origin, disability, age or other legally protected status.

**18.04** Responsibility for Employees. The Contractor shall be responsible to the Owner for the acts and omissions of all its agents and employees. The Contractor shall also be responsible for the acts and omissions of all its subcontractors and their agents and employees, and all other persons acting on behalf of the Contractor or subcontractors as set forth herein.

**18.05** Illegal Aliens. The Contractor certifies that it shall comply with the provisions of C.R.S. § 8-17.5-101 *et seq.* The Contractor shall not knowingly (a) employ or contract with an illegal alien to perform Work under the Contract Documents, (b) enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform Work under this Construction Agreement, or (c) enter into a contract with a subcontractor that fails to contain a certification to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform Work under this Construction Agreement.

## **ARTICLE 19**    **SUBSTITUTIONS**

The Contractor shall be held to have used in its base proposal and to furnish under the Contract those items of equipment and/or materials that are specifically identified in the plans and specifications by a manufacturer's name, model, or catalog number. After execution of the Construction Agreement, substitution of equipment and/or materials of makes other than those specifically named in the Contract Documents may be submitted to the Architect for review and approval by the Architect and Owner so long as the equipment or material proposed for substitution in the opinion of the Owner is just as suitable as the equipment and/or materials named in the plans and specifications so far as performance, construction, efficiency, and utility are concerned. A request for substitution shall ordinarily be required to be based upon one or more of the following grounds: the specified equipment or material is no longer available, a substitution will improve lead time, quality will be improved (documented detail required), or the Owner will incur substantial savings. All requests for substitution must be submitted in writing with supporting documentation by or through the Contractor to the Architect for initial review and recommendation before being submitted to the Owner for evaluation and final approval. In the absence of the Owner's written approval, no substitution of equipment or materials shall be allowed for any items specified in the Contract Documents. In case of a difference in price, occurring as a result of an approved substitution, the Owner shall receive all benefit of the difference in cost involved in the substitution. All approved substitutions shall be documented by the issuance of a formal Change Order as provided in these General Contract Conditions.

## **ARTICLE 20 CASH ALLOWANCE**

The Contractor shall include in the Contract sum all allowances named in the Contract Documents and shall cause the work so covered to be done by such Contractors and for such sums as the Owner may direct, the Contract sum being adjusted in conformity therewith. The Contractor declares that the Contract sum includes such sums for expenses and profit on account of cash allowances as he deems proper. No demand for expenses or profit other than those included in the Contract sum shall be allowed. The Contractor shall not be required to employ for any such work persons against whom he has filed a lien or has a reasonable objection due to previous legal claims.

## **ARTICLE 21 EXPEDITING MATERIALS**

The Contractor shall, immediately after receipt of the Notice of Award and approval of its list of subcontractors and material suppliers, place orders for all equipment, materials, and supplies required for the Work. The Contractor shall, when requested, submit to the Architect evidence that such orders have been placed. The Contractor shall exercise due diligence in seeing that all equipment, materials, and supplies are delivered well in advance of the time they are needed on the Project and shall properly store and protect same at its expense and in accordance with these General Contract Conditions, either at the Project site or elsewhere as approved by the Architect.

## **ARTICLE 22 BLASTING**

No explosives of any nature except for those normally employed in powder actuated tools, .38 caliber or smaller, shall be employed or used on the Project site except with the express and specific prior written approval of the Architect and the Owner and any appropriate governmental authorities, in each instance. The Contractor shall notify the Architect of need for such approval seven (7) days prior to the proposed use of such explosives.

## **ARTICLE 23 CUTTING, PATCHING, AND EXCAVATING**

**23.01 Standards.** The Contractor shall do all cutting, fitting, and patching that may be required to make the several parts of the Work come together properly and receive or be received by Work of other contractors or subcontractors shown upon, or reasonably implied by, the drawings and specifications for the completed Project.

**23.02 Responsibility.** Any cost caused by defective or improperly timed Work shall be borne by the party responsible therefor.

**23.03 Cutting and Sizing.** The Contractor and each subcontractor shall leave all chases, holes, or openings straight, true, and of proper size in its own Work, or cut the same in existing Work as may be necessary for the proper installation of its own or another contractor's or subcontractor's Work, consulting with the Architect regarding proper location and size of same. In case of a failure to leave or cut said chases, holes, or openings in the proper place, the Contractor or subcontractors shall cut them afterward at their own expense. No excessive cutting shall be permitted, nor shall any piers or other structural members be cut or modified in the field without the written consent of the Architect. After

such Work has been installed, the Contractor and subcontractors shall carefully fit around, close up, repair, patch, and point up same as directed to the entire satisfaction of the Architect. Each section of this specification shall include all cutting, patching, and excavating for that trade division unless specifically stated to the contrary.

## **ARTICLE 24 HAZARDOUS MATERIALS**

**24.01 Responsibility and Reporting.** Unless otherwise provided in the Contract Documents, the Contractor shall have no responsibility for the presence, handling, removal or disposal of hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), lead, or other hazardous materials. Prior to its commencement or continuation of any portion of the Work, the Contractor shall provide notice to the Owner of the presence, location, amount and condition of any known or suspected hazardous materials that are discovered at the Project site. Such notice shall be in writing and shall be submitted no more than twenty-four (24) hours after the presence of such materials becomes known or suspected.

**24.02 Contractor's Obligations.** In the event hazardous materials become known or suspected by the Contractor as described in Article 24.01 above, the Contractor shall not proceed with or continue the Work until it has received written authorization from the Owner. If the Contractor proceeds with the Work without said authorization, it assumes any and all responsibility and liability for contamination and cleanup at the Project site according to applicable federal and state laws, and for any death or personal injury, including but not limited to medical expenses that may be incurred by any individual as a result of exposure to hazardous materials on the Project site.

**24.03 Owner's Obligations.** In the event hazardous materials are identified or encountered during the course of the Project, the Owner at its expense shall take reasonable actions to properly and safely mitigate such materials.

**24.04 Management Plan.** The Contractor acknowledges that it and its employees, agents and subcontractors have the responsibility of being fully informed of the Owner's Management Plan as it relates to buildings located at the Project site and shall consult with the Owner about how such Plan addresses suspected or active asbestos-containing material areas within such buildings.

## **ARTICLE 25 CONTRACTOR ASBESTOS MANAGEMENT AND LEAD PAINT RESPONSIBILITIES**

It is the expectation of the Owner that Contractor and all subcontractors adhere to all AHERA, EPA, and Colorado Department of Public Health and Environment regulations regarding asbestos treatment and management before and during any construction, renovation or maintenance project. To that end, Contractor and all subcontractors are expected to review the asbestos management plan before the work begins. Any activity that could potentially disturb asbestos containing building materials must be brought to the Owner's attention prior to the start of work, and if the scope of work changes during the course of the Project. It is the Owner's expectation that Contractor and all subcontractors adhere to all federal and state regulations regarding the treatment and management of lead-based paint before, during, and after any construction, renovation, or maintenance project. To that end, Contractor and all

subcontractors are expected to review the lead-based paint (LBP) records before work begins, and complete additional testing for LBP as necessary. Any activity that potentially disturbs LBP must be brought to the Owner's attention prior to the start of work. All records of supplemental inspection and testing and any change in the scope of work will be provided to the Owner.

## **ARTICLE 26     DAMAGE TO UTILITIES**

**26.01** Adequate Precautions. The Contractor shall take adequate precautions to protect existing utilities on and off the Project site and avoid damage thereto. The Contractor shall repair or replace or have repaired or replaced at its expense any damage to streets, water, sewer, light, power, cable, or telephone lines or fiber network that are damaged by reason of the Contractor's Work.

**26.02** Location. The location and extent of underground utilities, fiber network, cables and conduit indicated on the drawings are not guaranteed. This information is shown only for such use as bidders and contractors may choose to make of it. The Contractor shall check with all public utility companies for utility locations and shall comply with their regulations regarding such utilities in performing the Work.

**26.03** Protection from Damage. The Contractor shall adequately protect active underground utilities from damage, and if damaged shall immediately effect all necessary repairs. Removal or relocation of active underground utilities shall be done only as indicated on the drawings. If such utilities are in use, they shall be maintained in continuous service. If not indicated on the drawings or not known to exist, the Contractor shall report discovery of such utilities in writing to the Architect and shall not proceed further until directed to do so.

**26.04** Inactive or Abandoned Utilities. Inactive or abandoned utilities, whether or not they are indicated on the drawings, shall be recorded as to location and depth and shall be removed for a distance of not less than three (3) feet from the outside line of all concrete Work unless otherwise required by regulations. Ends shall be capped or plugged as required by regulations. There shall be no adjustment of the GMP or Contract amount for Work due to inactive or abandoned utilities.

## **ARTICLE 27     CHANGES IN THE WORK**

**27.01** Change Orders. The Owner, without invalidating the Construction Agreement, may order changes in the Work within the general scope of the Project consisting of additions, deletions, or other revisions. Under such circumstances, the GMP, if applicable and established, and the Contract Time Schedule shall be adjusted accordingly. All such changes in the Work shall be authorized by Change Order. With the exception of emergency work as provided in Article 27.02, changes in the Work shall not be performed until authorization and execution of a Change Order has been completed. No Change Order or other form of order or directive by the Owner or Architect requiring additional compensable Work to be performed, which causes the aggregate amount payable under the Contract Documents to exceed the amount appropriated for the original Construction Agreement, shall be binding on the Owner or issued unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional Work have been made, and such assurance is

signed/countersigned by the Superintendent or his/her authorized representatives or designee and, if required by Owner policy, Owner's Board of Education. Any claim of the Contractor for adjustment under this section must be asserted in writing within ten (10) days from the date of the Contractor's receipt of the Change Order.

**27.02** Minor Changes. The Architect shall have authority to order minor changes in the Work not involving an adjustment in the GMP or Contract amount or an extension of the Contract Time Schedule and not inconsistent with the intent of the Contract Documents. Such changes may be effected by field order or by other written order. Such changes shall be binding on the Owner and the Contractor. In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in this Article.

**27.03** Price Differential. The cost or credit resulting from a change in the Work shall be determined in one or more of the following ways:

**27.03.01** By estimate, with a detailed cost breakdown as set forth in GC-27.03.03 below, and acceptance in a lump sum, with a maximum combined markup to the Owner, for the Contractor and all affected subcontractors per Exhibit C - Contractor's Fee Proposal.

**27.03.02** By unit prices named in the Contract or subsequently agreed upon.

**27.03.03** If the parties are unable to agree on one of the above methods, then the amount shall be determined by force account under the following formula:

**27.03.03.01** The actual cost of all direct labor performed (including foremen employed continuously on the Work, but not the salary, or any part thereof, of the Contractor's superintendent) and the actual materials furnished for and used in such Work, less all available cash, trade, or other discounts.

**27.03.03.02** Rental for the use of such items of equipment as have an individual value in excess of One Thousand Dollars (\$1,000); provided, however, that the amount of such rental charge and the length of time and probable cost of the use of such equipment shall have been authorized in writing by the Owner.

**27.03.03.03** All proportionate sums paid for royalties, permits, and inspection fees.

**27.03.03.04** All proportionate premiums for public liability insurance, workers' compensation, and other proper and necessary insurance, as well as all applicable payroll taxes.

**27.03.03.05** Either a predetermined lump sum; fixed fee; or per Exhibit C - Contractor's Fee Proposal, which fee shall be applied to the total of Article 27.03.03.01, Article

27.03.03.02 and Article 27.03.03.03 only, and shall constitute full compensation to the Contractor and all its subcontractors for all costs and expenses, including all overhead and profit, which are not otherwise enumerated in this Article 27.03.03.

**27.03.03.06** The Contractor shall keep and present, in such manner as the Owner may direct, an accurate accounting of all the fees and costs described in this Article 27.03.03, together with all supporting vouchers and other documentation, all subject to audit by the Owner.

## **ARTICLE 28 CLAIMS FOR EXTRA COST**

If the Contractor claims that any instructions by drawings or otherwise, after the date of the Construction Agreement, involve extra costs under this Contract that were not included in the original bid, or require an extension in the construction schedule, the Contractor shall give the Owner and the Architect written notice thereof no later than ten (10) days after the receipt of such instructions, and in any event before proceeding to execute the Work, except in an emergency endangering life or property, and the procedure shall then be as provided for changes in the Work. No such claim shall be valid unless so made. Any change in the Contract amount or construction schedule must be authorized by Change Order.

## **ARTICLE 29 DELAYS AND EXTENSIONS OF TIME**

**29.01** Delays and Extensions of Time. If the Contractor is delayed at any time in the progress of the Work by the negligence or other improper act of the Owner or the Architect, or by any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by any other cause that the Owner determines may justify the delay, then the completion date shall be extended by Change Order for such reasonable time as the Owner may determine.

**29.01.01** Extension of the Contract completion time will be considered for delays due to weather conditions only when such conditions have had a material, adverse impact upon the critical path of the construction schedule, are more severe and extended than those reflected by the ten (10) year average for the month as evidenced by climatological data, U.S. Department of Commerce, for the area where the Project is located, and only if a request for such an extension of time is received within seven (7) days of the first date of each delay. Extensions of time due to weather or other allowable reasons will be granted on the basis of one (1) calendar days' credit for every working day lost with each separate extension figured to the nearest whole calendar day.

**29.01.02** All Contractor requests for extension of time shall be subject to the Owner's approval and shall be made in writing to the Owner no more than seven (7) days after the occurrence causing the delay; otherwise they shall be deemed waived. Any request for extension of time for a change in the Work or for any occurrence allegedly causing a delay as provided for herein must be substantiated by demonstrating the effect of the change or occurrence on the critical path of the construction schedule. The request for owner approval of the time extension will include the Contractor's actual costs for the delay at completion of the delay.

**29.01.03** If no schedule or agreement is made stating the dates upon which written interpretations or detail drawings shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations or detail drawings until fifteen (15) days after demand is made for them, and then only if such claim is reasonable.

**29.01.04** The Owner reserves the right to occupy any part of the structure upon written notice to the Contractor from the Architect or the Owner, but only after the Architect has made a thorough inspection, accompanied by the Contractor's superintendent, to note any defects in workmanship or materials that are the responsibility of the Contractor, and pending Authorities Having Jurisdiction (AHJ) occupancy approval. Such inspection shall not be deemed to modify any other Contract requirements or provisions relating to observations, inspections or acceptance of the Work. Any such partial occupancy shall not be deemed a waiver of any provision for liquidated damages for delay in substantial completion.

**29.01.05** When the whole or a portion of the Work is suspended for any reason, the Contractor shall properly cover over, secure, and protect all Work as may be susceptible to damage in the absence of such action.

**29.02** Article Not Exclusive. This Article 29.00 does not exclude the recovery of damages by the Owner or Contractor for delay under other provisions of the Contract Documents.

**29.03** Acceleration of Work. In the event the Contractor fails to timely complete a critical portion of the Work, as evidenced by the latest update of the Contractor's construction schedule, the Owner shall have the right to require the Contractor, at no additional cost to the Owner, to take all necessary measures, including but not limited to, requiring Contractor and its subcontractors to work such overtime hours and/or increase their respective work forces as may be reasonably necessary to cure the delay and bring the Work back on the Contractor's construction schedule. If the Contractor fails to respond to the Owner's demand to modify its work force and bring those critical portions of the Work back on schedule, then the Owner may withhold progress payments until such time as the Contractor returns to schedule or terminate the Contract. Nothing contained herein shall be deemed to be an election of remedies by the Owner for a delay in the work caused by Contractor or its subcontractors.

## **ARTICLE 30 ACCESS TO WORK**

**30.01** Access. The Architect, the Owner, and their representatives shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access so that the Architect may perform its functions under the Contract Documents.

**30.02** Inspection. If the specifications, the Architect's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, the Contractor shall give the Architect timely notice of its readiness for such testing or approval by the Architect or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection. All required certificates of inspection shall be secured by the Contractor. If any Work is covered up without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination

at the Contractor's expense.

**30.03** Reinspection. Reinspection of questioned Work may be ordered by the Owner, and if so ordered, the Work must be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the Owner shall pay the cost of reinspection and replacement. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such cost.

**30.04** Testing. Materials incorporated into the Project shall be subject to routine tests as required to ensure their compliance with the specifications. Such tests may include, but shall not necessarily be restricted to, the following: concrete (primary mix design, slump tests, cylinder compressions tests, and air entrainment tests); steel (tensile tests); welds (field inspection and x-ray examination); soils (sub-soil investigation, physical analysis, and compaction tests); asphalt pavement (physical analysis and compaction tests); and roofing samples cut from in-place built-up roof. Any other basic materials for which standard laboratory test procedures have been established may also be included if doubt as to their quality should arise. Any testing contemplated by this section shall be done at the discretion of the Owner, who shall bear all costs, unless otherwise provided in the Contract Documents. The Contractor shall be held responsible for providing samples of sufficient size for test purposes and for cooperating with the Owner or its representative in obtaining and preparing samples for tests. All tests shall be in accordance with standard test procedures and shall be performed by persons or firms selected by the Owner.

## **ARTICLE 31      CORRECTION OF WORK**

**31.01** Correction of Work Before and After Completion. The Architect or Owner has the authority to reject Work that is defective or otherwise does not conform to the Contract Documents. The Contractor, following written demand, shall promptly correct all Work rejected by the Architect or Owner as defective or as otherwise failing to conform to the Contract Documents, whether observed before or after the date of final completion and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected Work, including the cost of the Architect's and/or Owner's consultant's additional services necessitated thereby. If the Contractor proceeds to build in or cover the item that has been rejected, the Contractor shall be wholly responsible for the cost of removal and replacement of said item and removal and replacement of all necessary Work surrounding or covering the item.

**31.02** Tests to Determine Conformance. Whenever in the opinion of the Architect or the Owner tests are essential to assure the professional evaluation of the Work that is subject to being rejected or condemned, the necessary number of tests shall be performed by consultants designated by the Owner. The recommendation of such consultants shall be final and all parties to the Contract shall comply with the methods and extent of the corrections submitted in writing to the Owner and the Architect by such consultants. The cost of the tests shall become the Contractor's responsibility when corrections of any nature are recommended by the consultant to the investigated Work; otherwise, the Owner shall pay for all tests performed. Should such special testing, inspection, or approval be caused by the Contractor's failure to follow the requirements of the Contract Documents or required tests

under GC-30.04 indicating conditions not in conformance with the Contract Documents, the costs of such additional testing, inspection, or approval shall be borne by the Contractor, regardless of the results.

**31.03 Removal of Rejected Work.** The Contractor shall promptly remove from the Project site all Work rejected by the Architect or Owner as failing to conform to the Contract Documents, whether or not the Work is physically incorporated. Thereafter, the Contractor shall promptly replace and re-execute such Work in accordance with the Contract Documents and without expense to the Owner. The Contractor shall further bear the expense of making good all Work of other contractors and/or subcontractors destroyed or damaged by such removal or replacement, and shall bear the expense of making good all of its Work and the Work of its subcontractors found to be defective by such removal or replacement. If the Contractor does not remove such rejected Work within a reasonable time, fixed by written notice from the Owner through the Architect, the Owner may remove it and may store the material at the expense of the Contractor. If the Contractor does not pay the expenses of such removal and storage within ten (10) days' time thereafter, the Owner may, upon ten (10) days' written notice, sell such materials at auction or at private sale. In such case, the Owner shall account to the Contractor for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor, including compensation for additional Architect or consultant services. If the net proceeds of sale do not cover all costs that the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. In addition, the Owner shall have any other remedies that may be available to it.

**31.04 Correction of Work After Final Payment.** Neither the final estimate or payment, nor any provision in the Contract Documents, shall relieve the Contractor of responsibility for faulty materials or workmanship and, unless otherwise specified, the Contractor shall remedy any defects due thereto and pay for any damage to other Work or property resulting therefrom, which appear within a period of one (1) year from the date of substantial completion. This warranty shall be in addition to and not in lieu of all other remedies available to the Owner.

**31.05 Failure to Correct the Work.** If the Contractor fails to correct defective or nonconforming Work, the Owner may correct it and otherwise proceed against the Contractor for the cost thereof in accordance with the provisions of these General Contract Conditions.

**31.06 Deductions for Uncorrected Work.** If the Owner deems it inexpedient to correct Work that has been damaged, is defective or has not been done in accordance with the Contract Documents, then an appropriate deduction from the price shall be made and reflected by a Change Order or, if the amount is determined after final payment, it shall be paid by the Contractor.

**31.07 Additional Obligations.** The obligations of the Contractor to correct the Work shall be in addition to, and not in lieu of, any other obligations imposed upon it by law, special guarantees, warranties, or other rights of the Owner.

## **ARTICLE 32      OWNER'S RIGHT TO CARRY OUT WORK**

If the Contractor should neglect to prosecute the Work properly or fail to perform any requirement of the Contract Documents, the Owner, after ten (10) working days' written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the reasonable cost thereof from the payment then or thereafter due the Contractor. In the event such Work is performed by the Owner, the Owner's employees, or by persons other than the Contractor at the Owner's request, the Owner shall not be liable to the Contractor for inconvenience expense or subsequent cost of removal of such Work. The amount to be deducted as the cost of doing the Work shall include the cost of the Architect's additional services made necessary by such default. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

## **ARTICLE 33      OWNER'S RIGHT TO TERMINATE CONTRACT**

**33.01** Termination for Cause. If the Contractor should be adjudged bankrupt; or if it should make a general assignment for the benefit of its creditors without approval of the Owner; or if a receiver should be appointed on account of its insolvency; or if it should refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers, competent supervision and superintendence of the Work, proper materials, or competent management of the Project; or if it should fail to make prompt payment to subcontractors for materials or labor; or disregard any laws, statutes, ordinances, codes, rules, regulations, lawful orders of a public authority or the instructions of the Architect or Owner; or otherwise be guilty of a material violation of any provision of the Contract Documents; then the Owner, when in its sole opinion sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor, and its surety, if any, ten (10) days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the Work by whatever method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finally completed and accepted by the Owner. If the unpaid balance of the Contract amount exceeds the expense of completing the Work, including the cost of additional architectural, engineering, managerial, consultant, and administrative services, such excess shall be paid to the Contractor. If such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner and the Owner shall be justified in withholding payment of any unpaid amounts. The expense incurred by the Owner, as herein provided, and the damages incurred through the Contractor's default, shall be reasonably determined by the Owner. The Contractor will not be reimbursed for any anticipated profit.

Termination Without Cause. Should conditions arise that in the Owner's opinion make it necessary or advisable to discontinue Work under the Contract Documents, the Owner may terminate the Contract in whole or in part without cause or fault by the Contractor by giving ten (10) days' written notice to the Contractor. The notice shall specify the date and extent to which the Contract is terminated. Upon any such termination, the Owner shall take possession of the Project site and all or any part of the materials and equipment delivered or en route to the site. In the event of termination without cause under this

section, the Contractor shall be equitably paid for all Work properly completed, based upon the approved schedules of values, and costs incurred by reason of the termination, including unavoidable costs attributable to termination of subcontracts.

**33.03 Termination by the Contractor.** The Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons: (1) Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; (2) An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or (3) because the Owner has not made payment on an undisputed Certificate for Payment within the time stated in the Contract Documents.

#### **ARTICLE 34 CONSTRUCTION SCHEDULE AND PROGRESS REPORTS**

**34.01 Construction Schedule.** The Contractor shall submit, within ten (10) work days after the date of the Notice of Award in a format acceptable to the Owner, an overall timetable of the construction schedule for the Project. This schedule shall start with the date of the notice of award, and the completion date shall be a date that will enable the Owner to accept the Work on the date specified in the Construction Agreement. The schedule shall portray fully a timetable representing the various elements in the schedule of values and shall provide for the expeditious and practicable execution of the Work. The time shown between the starting and completion dates of the various elements within the schedule shall represent one hundred percent (100%) completion of each element. The subcontractors shall be supplied copies of the Contractor's approved schedule. These subcontractors shall develop a similar schedule based on their respective Work. Additional detailed schedules of separate elements of the Work such as commissioning, test and balance, and owner training, may be requested at the Owner's discretion. No request for payment shall be accepted by the Owner until this schedule has been submitted as required herein. This schedule shall be revised from time to time during the course of the Work when the actual progress, in the opinion of the Architect or the Owner, varies materially from that previously approved. The contractor's schedule shall include activity dependencies and logic to clearly indicate the project's Critical Path activities.

**34.02 Monthly Progress Reports.** The Contractor shall submit monthly progress reports with each request for payment. Basically, these reports shall reflect the Contractor's "Work in place" progress and shall be certified by the Contractor as to the date and contents of such "Work in place" progress report. If requested by the Owner, the monthly progress reports shall also include representative photographs of the actual Work in place. Such reports shall depict progress and percentage of completion, consistent with the values and amounts contained on the corresponding request for payment. Failure to submit an approved schedule or monthly progress report shall be deemed cause to reject requests for payment.

**34.03 Scheduling.** The Contractor shall schedule all Work so as to reduce to a minimum any disruption in the use of the existing facilities and interruptions of utility service of any type. Where

electrical or mechanical Work performed under this Contract will necessitate interruptions of service to existing facilities, the Contractor shall furnish and install temporary service to such facilities or perform such Work at such times when said existing utilities are not in normal use. The Contractor shall bear the cost of all overtime or inconvenience resulting therefrom. Any remodeling work which may interrupt normal building functions, especially periodic standardized testing, shall be scheduled and coordinated with the Owner at least 1 (one) week prior.

#### **ARTICLE 35     SCHEDULE OF VALUES**

Before beginning work and prior to the first Application for Payment, the Contractor shall submit to the Owner a complete, itemized Schedule of the Values of the various parts of the work in format and level of detail as acceptable to the Owner, aggregating the total sum of the Contract, and for the total cost of each schedule of value, all subcontractors under such Contractor, supported by such evidence as to its correctness as the Owner may direct. The schedule of values will be submitted on forms supplied by the Owner or in a format with the appropriate level of detail as acceptable to Owner. This schedule will be used for the Application for Payment provided for in these General Contract Conditions. Along with such schedule of values, the Contractor shall submit a schedule of estimated monthly application amounts to be submitted over the course of the Project to assist the Owner in arranging payments.

#### **ARTICLE 36     PAYMENT**

**36.01** Certificates for Payment. No request for payment shall be submitted to the Owner until and unless it has been certified by the Architect. No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner shall constitute any acceptance of any Work not completed in accordance with the Contract Documents.

**36.02** Payments to Contractor. Partial payments shall be made as the Work progresses within thirty (30) calendar days after the close of the calendar month and receipt of an approved pay application by the 10<sup>th</sup> of the same month. Requests for payment, along with the appropriate supporting documentation (i.e. copies of all invoices, etc.) shall be submitted to the Architect on a regularly established monthly schedule approved by the Owner. Lien releases for prior payments made to subcontractors will be furnished upon request. The Owner reserves the right, if such right is available to Owner under the Contract Documents, to withhold payments at any time regardless of the Architect's recommendations or issuance of certificate for payment. The request for payment shall be based on the same items as are shown in the schedule of values itemizing the material used and Work performed for which payment is claimed. In preparing estimates, material delivered and properly stored on the site and preparatory Work done may be taken into consideration.

**36.02.01**       If payments are made on account of materials not yet incorporated in the Work, but delivered and suitably stored at the Project 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 procedures that will establish the Owner's interest, including applicable insurance and transportation to the Project site.

**36.02.02** Payments shall be made in the full value of the Work performed and material stored, less five percent (5%) of such value which shall be retained until completion and acceptance of all Work unless otherwise agreed by Owner, and less the aggregate of any previous payments.

**36.02.03** Under any contract exceeding One Hundred Fifty Thousand Dollars (\$150,000) pursuant to which sums are withheld to assure satisfactory performance, the Contractor may withdraw the whole or any portion of such sums withheld if the Contractor deposits acceptable securities with the Owner in an amount at all times at least equal to the amount withdrawn. All such withdrawals shall be on the Owner's approved forms and shall require that the acceptable securities be endorsed in favor of the Owner, authorizing the Owner to negotiate the acceptable securities and to receive the payments due.

**36.02.04** The Contractor warrants and guarantees that title to all Work, materials, and equipment covered by a request for payment, whether incorporated in the Project or not, shall pass to the Owner upon the receipt of such payment by the Contractor, free and clear of all liens, claims, security interests, or encumbrances; and that no Work, materials, or equipment covered by a request for payment shall have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. This provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

**36.02.05** After the date of final completion of the Work, final settlement for the Project shall be advertised in accordance with Colorado law, including without limitation, C.R.S. § 38-26-107 and Article 51.

**36.03** Payments Withheld. The Owner may withhold payment or the Architect may decline to issue a certificate for payment in whole or in part, or the Architect may withhold or nullify the whole or any part of any certificate previously issued, because of subsequently discovered evidence or subsequent inspections, for such an amount or to such extent as may be necessary in the opinion of either the Owner or the Architect to protect the Owner from loss on account of:

**36.03.01** defective Work not remedied;

**36.03.02** third party claims filed or reasonable evidence indicating probable filing of claims;

**36.03.03** failure of the Contractor to make payments properly to subcontractors or for material or labor;

**36.03.04** a reasonable doubt that the Contract can be completed for the balance

then unpaid;

**36.03.05** damage to another separate contractor or to the property;

**36.03.06** failure of the Contractor to perform any portion of the Work in a timely manner or in compliance with any approved schedules;

**36.03.07** failure of the Contractor to provide a certificate evidencing that insurance required by the Contract Documents will remain in final force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner; or

**36.03.08** failure of the Contractor to submit on a timely basis any documentation required by the Contract Documents, including without limitation monthly progress reports, schedule of values, receipts, releases and waivers of liens or request for approval of subcontractors.

**36.04** Recordkeeping. As further described in Article 54, the Contractor shall keep complete and accurate records, accounts and books with regard to all materials, equipment and labor involved in the performance of the Work in accordance with generally accepted accounting principles. The Owner and Architect shall have access to the Contractor's accounting records at all reasonable times, and the Contractor agrees to make any changes to its system of keeping these records as the Owner may reasonably request in writing. All such records shall be preserved and the Owner shall have access to them for six (6) years after final payment to the Contractor.

**36.05** Interest. Contractor waives any right to interest on payments due and unpaid from the date payment is due unless the withholding of payment by the Owner is in bad faith. Contractor further waives any right to interest for retainage withheld if the Contractor should fail to comply with the terms of the Contract Documents.

## **ARTICLE 37 SEPARATE CONTRACTS**

**37.01** Other Contracts. The Owner reserves the right to enter into other contracts in connection with the Work. The Contractor shall afford such other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate its Work with theirs.

**37.02** Duty to Inspect and Report. If any part of the Contractor's Work depends on proper execution or results upon the Work of any other contractor, the Contractor shall inspect and promptly report in writing to the Owner through the Architect any defects in such Work that render it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report in writing shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work, except as to defects that may subsequently develop in the other contractor's Work.

**37.03** Duty to Measure. To ensure the proper execution of its subsequent Work, the Contractor shall measure Work already in place and shall immediately report in writing to the Owner

through the Architect any discrepancy between the executed Work and the Contract Documents.

## **ARTICLE 38 SUBCONTRACTORS**

**38.01** Subcontractors and Suppliers. Within in ten (10) days of the mutual execution of the Contract or, in the case of a CM/GC project delivery method, within ten (10) days of the Notice to Proceed, the Contractor shall include the names of its subcontractors and suppliers of labor and materials. The Contractor shall, before awarding any subcontracts, re-verify to the Owner and Architect in writing the names of subcontractors proposed for the Project. Any deviation from the original subcontractor and supplier list shall not be allowed unless justification is submitted in writing to the Owner by the Contractor that the subcontractor or supplier is deemed unfit or unable to perform the specified Work, is unwilling to enter into a subcontract, or is not in compliance with the Contract Documents. The Contractor shall not employ any subcontractors that the Owner or Architect may, within a reasonable time, object to as incompetent, unfit, or otherwise undesirable. Substitutions of subcontractors listed in the executed proposal form may not be made without written approval of the Owner. If, before or after the execution of the Contract, a change of any subcontractor on such list is required by the Architect or by the Owner prior to the award of the relevant contract, the contract price may be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

**38.02** Obligations. The Owner shall, on request, furnish to a subcontractor, wherever practicable, evidence of the amounts certified on the subcontractor's account. The Contractor agrees that it is as fully responsible to the Owner for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

**38.03** Final Listing. The Contractor, at the conclusion of the Work and before final payment is made, shall furnish to the Owner a listing of the names, contact persons, addresses, and telephone numbers of all subcontractors and material suppliers who furnished labor and materials on the Project, with identification of the services rendered and materials provided.

**38.04** No Contractual Relationship. Nothing contained in the Contract Documents shall create any direct contractual relationship between any subcontractor and the Owner.

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

**39.01** Written Agreement. Unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner, the Contractor agrees to bind each of its subcontractors by a written agreement and require in such agreements that every subcontractor be bound by the terms of the Construction Agreement, these General Contract Conditions, any Supplementary Conditions, and the drawings and specifications as far as applicable to the subcontractor's Work.

**39.02** Subcontractors' Agreement. Each subcontractor shall agree:

**39.02.01** To be bound to the Contractor by the terms of the Construction

Agreement, these General Contract Conditions, the Supplementary Conditions, the drawings and specifications, and any other Contract Documents, and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by those documents, assumes toward the Owner.

**39.02.02** To preserve and protect the rights of the Owner and the Architect under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights.

**39.02.03** To perform all Work in accordance with the requirements of the Contract Documents.

**39.02.04** To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment as specified in the General Contract Conditions.

**39.02.05** To make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the General Contract Conditions of the Contract and the Supplementary Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost is one week.

**39.02.06** To purchase and maintain for the duration of the Project and completion of the Work and any warranty periods such insurance as required by Contractor in Article 10.

**39.03** Contractor's Agreement. The Contractor agrees:

**39.03.01** To be bound to the subcontractor by all the obligations that the Owner assumes to the Contractor under the Construction Agreement, these General Contract Conditions, any Supplementary Conditions, the drawings and specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

**39.03.02** To pay the subcontractor not later than twenty-one (21) days immediately following the payment of each certificate issued under the schedule of values described in these General Contract Conditions, the amount allowed to the Contractor on account of the subcontractor's Work to the extent of the subcontractor's interest therein.

**39.03.03** To pay the subcontractor, upon the payment certificates, if issued otherwise than as in Article 36.03.02 above, so that at all times the Contractor's total payments shall be as large in proportion to the value of the Work done by it as the total amount certified to the Contractor is to the value of the Work done by the subcontractor.

**39.03.04** To pay the subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.

**39.03.05** To pay the subcontractor a just share of any insurance payment received by the Contractor, applicable to Work performed by such subcontractor.

**39.04** Verified Documentation. The Owner may require the Contractor to submit verified documentation evidencing that full and timely payments have been made to its subcontractors and suppliers, and/or that legal justification exists for withholding payments. In addition, the Owner may contact the subcontractors and suppliers directly to obtain verification that payments have been made as required by law or the Contract Documents.

**39.05** No Obligation. Nothing in this Article 39 shall create any obligation on the part of the Owner to pay or to see to the payment of any sums to any subcontractor, nor shall it form the basis for any action by the subcontractor against the Owner on any contractual theories.

**39.06** Meeting with Architect. The Contractor shall arrange for the foreman of each subcontractor (mechanical, electrical, masonry, plastering, painting, etc.) on the job to meet with the Architect at the job prior to any Work being started by the subcontractor so that phases of the subcontractor's Work can be thoroughly discussed and the quality of materials and workmanship expected can be completely understood and agreed upon.

#### **ARTICLE 40 PREFERENCE FOR COLORADO LABOR, MATERIALS, AND RESIDENT BIDDERS**

**40.01** Colorado Labor. In compliance with Colorado Revised Statutes §§ 8-17-101 and 8-17-102, Colorado labor shall be employed to perform at least eighty percent (80%) of the Work. Owner, in Owner's sole discretion after consultation with the State of Colorado, shall have the right to waive the eighty percent requirement if, in the Owner's sole discretion, there is reasonable evidence to demonstrate insufficient Colorado labor to perform the Work and if compliance with this Article 40.01 would create an undue burden that would substantially prevent a project from proceeding to completion. Owner shall not impose contractual damages on Contractor for a delay in the Work due to the Owner's decision to exercise this right. The term "Colorado labor" means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

**40.02** Resident Bidders. In compliance with Colorado Revised Statutes § 24-103-908, preference shall be given to resident bidders against nonresident bidders from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. The term "resident bidder" means a person, partnership, corporation, or joint venture that is (a) authorized to transact business in Colorado and maintains its principal place of business in Colorado; or (b) authorized to transact business in Colorado, maintains a place of business in Colorado, and has paid Colorado unemployment compensation taxes in at least six (6) of the eight (8) quarters immediately prior to bidding on a construction contract for the Project.

## **ARTICLE 41      HISTORICAL DATA**

In addition to the warranties, guarantees, operating instructions, etc., elsewhere specified in the Contract Documents, at the conclusion of the Work and before final payment is made, the Contractor shall furnish a listing of the principal's names, addresses, and telephone numbers of all subcontractors and suppliers that furnished labor and/or materials on the Project, with identification of the services and materials rendered by each. There shall be provided one (1) copy for the Architect and one (1) copy and one (1) electronic copy for the Owner in a file format of the Owner's preference. All copies shall be delivered to the Architect for review and distribution.

## **ARTICLE 42      CONTRACTORS' MUTUAL RESPONSIBILITY**

The entire Project may be covered by more than one contract and, in such case, there will of necessity be a certain overlapping of obligations and responsibilities. Each contractor shall, therefore, take due notice of the Work called for in contracts other than its own. If the Contractor causes damage to the Work of another contractor, the Contractor agrees, upon notice of said damage, to settle with such other contractor by agreement, if it will so settle. If such other contractor sues the Owner on account of any damage alleged to have been caused by the Contractor, the Owner may notify the Contractor who shall, at the Owner's option, defend such proceedings at the Contractor's expense or reimburse the Owner for the expenses incurred in its defense, and if any judgment against the Owner results therefrom, the Contractor shall pay or satisfy the judgment and pay all costs and expenses thereby incurred by the Owner.

## **ARTICLE 43      ARCHITECT'S STATUS AND INSPECTIONS**

**43.01** Authority. The Architect shall be the Owner's representative during construction and until the expiration of the warranty period. The Architect shall have authority to act on behalf of the Owner only to the extent expressly provided in the Contract Documents or otherwise in writing. The Architect, with written approval of the Owner, shall have authority to stop the Work whenever such stoppage may be reasonably necessary in its opinion to ensure the proper execution of the Contract.

**43.02** Decisions. The Architect shall be, in the first instance, the interpreter of the conditions of the Contract and the judge of its performance, although the Owner shall retain the final authority in decisions regarding such matters. The Architect shall, within a reasonable time, make recommendations on all claims of the Contractor and on all other matters relating to the execution and progress of the Work. All such decisions shall be subject to review by the Owner. The Architect's decisions in matters relating to artistic effect, after consultation with the Owner, shall be final, if within the terms of the Contract Documents.

**43.03** Inspections. The Contractor shall provide timely notice to the Architect when inspections are desirable or required by the terms of the Contract Documents or the Architect's Agreement with the Owner. Such notice shall be given in order to allow for the following reviews and inspections, among others:

**43.03.01** Review and approval of shop drawings, samples and other submissions for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents.

**43.03.02** Inspection of load-bearing surfaces or excavations before footings are poured.

**43.03.03** Inspection of reinforcing steel after installation and before concrete is poured.

**43.03.04** Inspection of structural and architectural concrete before, during, and after pouring.

**43.03.05** Evaluation of all laboratory reports.

**43.03.06** Inspection of structural steel after erection and prior to its being covered or enclosed.

**43.03.07** Inspection of mechanical work following its installation and prior to its being covered or enclosed.

**43.03.08** Inspecting of electrical work following its installation and prior to its being covered or enclosed.

**43.03.09** Inspection of exposed surfaces for compliance with the Contract Documents.

#### **ARTICLE 44**    **CLEANING UP**

**44.01** Contractor's Responsibilities. The Contractor shall at all times keep the Project site free from accumulations of waste material and rubbish caused by its employees or Work, and shall remove all rubbish as often as it deems necessary or as directed by the Owner or the Architect. Upon completion of the Work, the Contractor shall remove all its rubbish, tools, scaffolding, and surplus materials from and about the Project site, and shall wash all glazing and window frames inside and outside where work was performed removing all stains, paint, etc., from same. Care shall be taken not to scratch the glazing during this clean up.

**44.02** Standards. All floors and wall coverings shall be left thoroughly clean and finished; all walls and ledges shall be dusted; all plumbing fixtures shall be cleaned; all hardware shall be free of all labels, paint, stains, dust, dirt, and the like; all marks, stains, fingerprints, oil, and dirt shall be removed from painted, decorated, or natural finish Work and the Project building(s) shall be ready for occupancy except for being further equipped by the Owner. In case of dispute, the Owner may perform such cleaning up as may be required and charge the cost to the Contractor.

## **ARTICLE 45      USE OF PREMISES**

The Contractor shall confine its equipment, the storage of materials, and the operations of its workers to locations indicated by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the Project site with its materials. The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of persons or property. During the performance of the Work, the Contractor and his subcontractors and their employees, agents or suppliers, will use such entrance or entrances to the construction site that may be designated from time to time by the Owner. Further, the Contractor and its subcontractors, their employees and agents, shall perform the Work at such times of the day and days of the week as may be designated by the Owner from time to time. The Contractor shall enforce all Owner instructions and other regulations regarding signs, advertisements, fires, and smoking and shall not allow the possession or consumption of alcohol or drugs on the Project site by its or any subcontractor's workers.

## **ARTICLE 46      OCCUPANCY**

The Contractor, upon the Owner's written request, shall allow the Owner to occupy portions of the Work and to place and install, subject to reasonable restrictions, as much equipment and furnishings during the progress of the Work as is possible without interfering with the progress of the Work. Such occupancy and the placing or installing of equipment and furnishings shall not in any way evidence the final completion of the Work or signify the Owner's acceptance of the Work, or any part of it. Equipment includes such things as kitchen equipment, etc. Furnishings include such things as lockers, benches, desks, etc. Prior to occupancy, when practicable, the Architect shall make a thorough inspection accompanied by the Contractor's superintendent to note any defects in workmanship or materials that are the responsibility of the Contractor. The provisions of this section shall not be in limitation of the Owner's rights set forth in Article 28 and Article 29.

## **ARTICLE 47      TEMPORARY OR TRIAL USAGE**

**47.01** Not Evidence of Acceptance. Temporary or trial usage by the Owner of any mechanical device, machinery, apparatus, equipment, or any Work or material supplied under the Contract before final completion and written acceptance by the Architect shall not be construed as evidence of the Architect's or Owner's acceptance of same or the commencement of any warranty period.

**47.02** Authorization. The Owner has the privilege of such temporary or trial usage, for such reasonable time as the Owner and the Architect deem proper. The Contractor shall make no claim for damage or injury to or breaking of any parts of such Work that may be caused by weakness or inaccuracy of structural parts or by defective material or workmanship. If the Contractor so elects, it may, without cost to the Owner, make such trial usage. However, trials shall only be conducted with the Architect's prior approval and under the Architect's observation.

## **ARTICLE 48      TESTING OF BUILDING SYSTEMS**

**48.01** Testing Plan. The Contractor shall submit a written plan prior to completion and

acceptance, consistent with the Contract Documents and applicable codes, for the testing and training of owner's maintenance staff of all building systems. All testing shall be of the complete system, before covering, or of individually separable larger portions of the system and shall be performed in the presence of the appropriate consultant and representative of the Owner. A written report shall be filed in the Owner's office of Construction, recording each test, and signed by such consultant. All owner training shall be videotaped, a copy of which shall accompany the O&M manuals presented at the job completion

**48.02 Contractor's Responsibility.** When heating, air conditioning, ventilation, exhaust, or items of electrical or other equipment are installed, it shall be the responsibility of the Contractor installing such equipment to operate it for a sufficient period of time as required by the Architect for proper testing of the equipment and instructing the Owner's operating personnel. All items of equipment, testing meters, testing instruments, and incidentals required for proper testing and for instructing the Owner's operating personnel shall be provided by the Contractor responsible for providing and installing the equipment.

#### **ARTICLE 49 MISCELLANEOUS KEYS, SWITCHES, ETC.**

Except as otherwise specifically required by the technical specifications, at the completion of the Project all loose keys for hose bibs, adjustment keys and wrenches for door closers and panic hardware, keys for electric switches, electrical panels, and all other equipment shall be identified, accounted for and turned over to the Owner.

#### **ARTICLE 50 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION**

It is understood and agreed that substantial completion of the entire Project within the time specified in the Construction Agreement is a matter of vital necessity to the Owner, that the Owner will suffer substantial damages if the entire Project is not substantially completed within the specified time, and that it would not be possible to accurately determine the amount of such damages. In view of these facts, the Contractor agrees to pay the Owner liquidated damages in the sum set forth in the Construction Agreement for each calendar day, if any, which elapses between the date stated in the Construction Agreement, as extended by any extensions of time under the provisions of these General Contract Conditions, and the date of substantial completion. If the Contractor fails to pay such liquidated damages promptly upon demand therefor, the surety on the Contractor's performance bond shall pay such damages. Also, the Owner may withhold all or any part of such liquidated damages from any payment due the Contractor. No changes in the Work shall extend the time for completion or the contract schedule unless set forth in a properly approved Change Order.

#### **ARTICLE 51 ACCEPTANCE AND FINAL PAYMENT**

**51.01 Before Final Inspection.** Before requesting final inspection and acceptance, the Contractor shall submit to the Architect: (a) the final punch list with individual items signed off by Contractor, (b) redlined record Contract Documents, (c) operations and maintenance manuals, and (d) training agenda and schedule. Owner shall be responsible for obtaining: (a) completed and approved

documentation of commissioning functional performance testing with the exception of any required seasonal or approved deferred testing, (b) final test and balance report, and (c) commissioning agent's open items list signed off by the Contractor.

**51.02 Final Inspection.** Within a reasonable time after final completion of the Work and before final acceptance thereof, a final inspection shall be made by the Architect, accompanied by the Owner, including any representatives designated by Owner, to determine whether the Work has been completed in accordance with the Contract Documents. A written report of inspection and detailed punch list, certified as to contents and date of inspection, shall be completed by the Owner and the Architect and delivered or mailed to the Contractor.

**51.03 Acceptance.** All prior requests for payment shall be subject to correction in the final request for payment. When all Work, including the punch list, has been certified by the Architect as finally and satisfactorily completed, and approved by the Owner's Board of Education, Superintendent, or his/her authorized representative or designee, it shall be deemed accepted as of the date of the issuance of the Owner's letter of acceptance.

**51.04 Final Settlement.** Upon submission of the final request for payment, the time of final settlement for the Work shall be established and shall thereafter be advertised by two (2) publications of notice, the last of which shall appear at least ten (10) days prior to the time of final settlement. Final payment and settlement shall be made at the time of final settlement as advertised, or as soon thereafter as appropriate and practicable, in the judgment of the Owner. The Owner shall not authorize final payment until all items on the final punch list are complete, all operations and maintenance manuals accepted, all Owner training is complete, and all close out documents are filed with the Owner.

**51.05 Unpaid Claims.** Neither the final payment nor any part of any sums withheld shall become due until the Contractor delivers to the Owner verified documentation showing full payment for all labor, materials, supplies, and equipment expended upon or incorporated in the Work under the Contract. If any unpaid claim for such labor, materials, supplies, or equipment is filed with the Owner before payment in full of all sums due the Contractor on the final settlement date, the Owner shall withhold from the Contractor sufficient funds, if available, to provide for the payment of such claim, until the same is paid or withdrawn. Such payment or withdrawal shall be evidenced by filing with the Owner a receipt for payment in full or an order authorizing withdrawal signed by the claimant or its duly authorized agent or assignee. Such funds shall ordinarily 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 final settlement, unless an action has been commenced within that time to enforce such unpaid claim and a notice of lis pendens has been filed with the Owner. At the expiration of the ninety-(90)-day period, the Owner shall release to the Contractor all funds that are not the subject of such action. Notwithstanding the provisions in this section, in the event the Colorado statutory procedure as set forth herein is amended during the term of the Construction Agreement, such amended procedure shall be substituted accordingly.

**51.06 Unsatisfied Claims.** If any claim for such labor, materials, supplies, or equipment

remains unsatisfied after all payments are made by the Owner to the Contractor, the Contractor shall refund to the Owner all sums which the latter may for any reason be compelled to pay to satisfy such claim, including all costs and attorneys' fees incurred by the Owner as a result of the Contractor's default in such respect.

**51.07 No Waiver.** The making and acceptance of final payment shall not constitute a waiver of any claims by the Owner, including, among others, those arising from unpaid claims, from faulty work that appears before or after final payment, or from any failure to comply with any requirements of the Contract Documents.

## **ARTICLE 52 SALES AND USE TAX**

The Contractor shall coordinate with the Owner to ascertain whether sales or use tax may be collectible on the purchase of building materials, supplies, and equipment used on the Project by the Contractor. Some cities and municipalities will charge sales or use tax on building materials, supplies, and equipment "picked up" and/or used within that city or municipality by a Contractor. Whenever possible, the Contractor shall have building materials, supplies, and equipment for the Project delivered to the construction site by common carrier, conveyance by the seller, or by mail, to avoid city or municipal sales and use taxes for which refunds will not be made. The Owner is exempt from the payment of any state sales and use taxes for materials, supplies, and equipment used on the Project by the Contractor and subcontractors. For the purpose of exercising such exemption, the Contractor and all its subcontractors shall apply for and obtain a certificate of exemption for the Work from the Colorado Department of Revenue. Copies of such certificates shall be filed with the Owner before any materials are purchased or any Work commenced hereunder. No amounts paid to Contractor pursuant to the Construction Agreement shall include reimbursement for such taxes. At the time of final completion, if required by the local jurisdiction, the Contractor and his subcontractors shall execute affidavits, in duplicate, showing the amount of local municipal sales or use taxes, if any, paid by the Contractor or subcontractors upon materials used on the project, which affidavits shall further state that all such materials have been "built in" to the project, and where books and records and other substantiating evidence of payment of said tax are located and where they may be examined by appropriate governmental authorities, if such examination is required. The Contractor and all subcontractors shall maintain sufficient records to verify the amount of sales and use taxes paid to any local governmental entity. Failure to keep such records, resulting in the inability of the Owner to claim a refund for sales and use taxes for such materials, if allowed, shall render the Contractor or subcontractor liable for the amounts of such tax refund as determined by the Architect's/Consultant's cost estimates of such materials.

## **ARTICLE 53 LIENS**

It is hereby mutually understood by and between the parties hereto that no contractor, subcontractor, material supplier, vendor, laborer, mechanic, or other person, can or will contract for or in any other manner have or acquire any lien upon the Project building or Works covered by this Contract, or the land upon which the same is situated.

## **ARTICLE 54      INSPECTION OF CONTRACTOR'S RECORDS**

**54.01** Owner's Inspection. The Contractor's records and the records of any of the Contractor's affiliates, subsidiaries or parent companies shall be subject to inspection and audit in connection with the Contract. "Records" shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating worksheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other supporting evidence reasonably deemed necessary by the Owner to substantiate charges related to the Contract. All of the foregoing shall be open to inspection and subject to audit and/or reproduction by the Owner or its agent or authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the Work, the appropriateness of the adjusted guaranteed maximum, if applicable, the quality of the Work installed, and/or any invoices, Change Orders, payments or claims submitted by the Contractor or any of its payees pursuant to the execution of the Contract.

**54.02** Public Inspection. To the extent not prohibited by federal law, the Contract is subject to public release through the Colorado Open Records Act, C.R.S. § 24-72-101, *et seq.*

## **ARTICLE 55      WARRANTIES ON PORTIONS OF THE WORK**

The Contractor shall, in case of Work performed or materials or equipment provided for which warranties are required by the Contract Documents, secure the required warranties and deliver copies thereof to the Architect and the Owner at the time that the Work is finally completed. There shall be provided one electronic copy for the Architect and two copies (one electronic and one printed) for the Owner, bound into the operations and maintenance manuals. All such warranties shall commence on the date set forth in the Certificate of Substantial Completion and shall not in any way reduce the Contractor's responsibilities under the Contract. Notwithstanding the foregoing, the warranty period shall not begin with respect to any item that is not completed on the date set forth in the letter of acceptance until such item is finally completed. Whenever guarantees or warranties are required by the specifications for a longer period than one year, such longer period shall govern. Owner shall make use of web-based program for reporting of warranty issues to the Contractor with periodic status reports given to the Architect and Owner.

## **ARTICLE 56      CONTRACTOR'S PROJECT GUARANTEE AFTER COMPLETION**

**56.01** Warrant and Guarantee. The Contractor expressly warrants and guarantees that the Project will be constructed in a first-class, workmanlike manner; that it will be safe, free from structural and workmanship defects and defects in materials; and that the improvements will be suitable and fit for occupancy and for the purpose for which they were intended. Contractor shall, as a condition of acceptance, provide a certification letter that no asbestos containing materials were used in the Project.

**56.02** Unconditional Agreement to Remedy. Neither the Architect's approval of the final

request for payment nor payment of any request for payment or of any sum previously withheld from the Contractor shall relieve the Contractor of responsibility for its warranty and guarantee hereunder or for faulty materials or workmanship or the faulty workmanship of its subcontractors, and, unless otherwise agreed, the Contractor unconditionally agrees to remedy any defects due thereto, and pay for any damages resulting therefrom, which shall appear within a period of one (1) year from the date set forth in the Certificate of Substantial Completion.

**56.03** Inspections. The Owner, the Architect, and the Contractor together shall make at least one (1) complete inspection of the Work after the Work has been accepted by the Architect and the Owner. One such inspection shall be made approximately eleven (11) months after the acceptance of the Work. The Architect shall make a written report of these inspections, certified as to contents and date of inspection, and forward these reports electronically to the Owner and the Contractor within seven (7) days after completion of each inspection. 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 deemed satisfactory to the Owner.

**56.04** Owner's Remedies. If the Contractor fails to promptly correct all deficiencies and defects shown by the report, the Owner may do so, after giving the Contractor ten (10) days' written notice of its intent to do so. The Owner shall be entitled to collect from the Contractor all costs and expenses incurred in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects. The guarantee and warranties of the Contractor provided for herein are in addition to and not in lieu of any other remedies available to the Owner.

## **ARTICLE 57      INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify and hold the Owner and the Architect and their directors, agents and employees harmless from and against all liabilities, costs, and expense, including attorneys' fees, arising out of, involving, or in connection with any death, personal injury or property damage, including the Work itself and including the loss of use therefrom, but only to the extent caused by Contractor's negligent or willful acts or omissions or the negligent or willful acts or omissions of Contractor's subcontractors, agents, or employees. This specific indemnification by the Contractor is in addition to and not in lieu of other remedies which may be available to the Owner. This provision shall survive the termination of the Construction Agreement.

## **ARTICLE 58      LABOR DISPUTES**

Notwithstanding any other provision contained elsewhere in the Contract Documents and superseding any contrary term expressed in the Contract Documents, the Contractor agrees that in the event of any picket or other form of labor dispute at the Project site, whether such dispute or picket is in connection with the Contractor, subcontractor, or any other person or entity on the Project site, the Contractor shall continue to perform the Work required under the Contract Documents without interruption or delay. In the event the Contractor fails to continue the performance of the Work without interruption or delay because of such picket or other form of labor dispute, the Owner may terminate the services of the Contractor after giving seventy-two (72) hours' written notice of its intent to do so. The terminated

Contractor may then be replaced at the discretion of the Owner and all extra costs involved in doing so shall be payable by the terminated Contractor.

**ARTICLE 59      LIMITATION OF ACTIONS**

Any actions against the Contractor, its subcontractors, suppliers, or others providing materials or services for the Project, brought to recover damages for injury to person, damage to property (including loss or damage to property on the Project itself), or defects in materials caused by the design, manufacture, supplying, planning, supervision, inspection, construction, or observation of construction of the Project shall be brought within the time frames set forth under applicable law.

**ARTICLE 60      DISPUTES**

The Construction Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute concerning the Construction Agreement or the Project shall be exclusively in the federal court located in Colorado or the state court located in Douglas County, Colorado.