



Denver Public Schools

September 27, 2013

Subject: Request for Proposal, 14-BS-2037

CM/GC Contractor Project at Stapleton Northfield Campus (Grades 6-12) School

Enclosures: (1) Vendor Acknowledgement
(2) Instructions to Vendors
(3) Scope of Work/Specifications
(4) Pricing template
(5) CM/GC Agreement, Exhibits, and General Conditions
(6) Performance and Bid Bond Forms
(7) Documents can be found at: <http://sdrv.ms/1dYMo0x>

To: All prospective vendors:

Enclosed, please find a Request for Proposal (RFP) to provide Denver Public Schools (DPS) with pre-construction and construction services as further described in the Scope of Work/Specifications and the Construction Manager/ General Contractor (CM/GC) Agreement (the "Agreement") Unless otherwise noted, Vendors must provide a proposal on all of the requirements stated within this request. Vendors must be able to commit the resources necessary to provide the pre-construction and construction services requested in a timely manner and conform to all material aspects of the Scope of Work/Specification enclosed.

To be considered valid in the selection process, all proposals must follow the critical dates, as set forth below:

Critical dates:

1) RFP Issue date- September 23, 2013

2) Questions due date- October 8 2013 3:00 PM, Local Denver Time. Responses to questions will be provided in writing to all prospective vendors, by October 14, 2013 3:00 PM, Local Denver Time. All questions are to be emailed to Brian Swift at brian_swift@dpsk12.org. Please Cc both the Architect (Tim Habben) at thabben@loaarch.com and the DPS Project Manager (Andrew Amador) at andrew_amador@dpsk12.org as a courtesy. No phone calls are allowed. Only emailed questions will be responded to.

3) Pre-Proposal Meeting – A mandatory pre-proposal meeting will be held on **September 27, 2013 at 8:00 AM Local Denver Time at Mitchell E.S. 1350 E. 33rd Ave. Denver, CO 80205. (Large Conference Room)**

4) Proposal due date- Proposals must be sent or delivered as directed within the proposal instructions and received on or before, **October 29, 2013, 11:00 AM, Local Denver Time to the District's Construction Purchasing Office located at 1350 E. 33rd Ave., Denver, CO 80205. Proposals received after this time will not be considered and individual extensions to the due date will not be granted. The District will not accept an e-mail or fax response to this Request for Proposal. You are responsible to address the envelope as follows- Denver Public Schools, Construction Purchasing Department, 1350 E. 33rd Ave., Denver, CO 80205, **Attn: 14-BS-2037.****

NOTE: THERE WILL NOT BE A BID OPENING ON THE PROJECT.

5) Proposal presentations- Denver Public Schools reserve the right to invite the top qualified vendors to provide an oral presentation at a date to be determined.

6) Proposal Expiration date- Vendor must indicate an expiration date for the proposal and pricing. Any expiration date shall not be less than ninety (90) days from the proposal due date as indicated herein.

Please be advised that the award of any agreement is based upon the content of the vendor's proposal. Organized, succinct and straight forward submissions are appreciated. There is no need to go to excessive costs in preparing elaborate packaging. Prior to a formal award, all contract terms and conditions must be agreed upon by all parties. Please address any inquiries to the following: brian_swift@dpsk12.org

Sincerely,

Brian Swift
Supervisor Construction Purchasing
Denver Public Schools

VENDOR ACKNOWLEDGEMENT

Purpose: The purpose of this RFP is to provide Denver Public Schools a proposal for CM/GC fees for the services described in the Scope of Work/Specifications and the Agreement.

Date: September 27, 2013
Proposal number: 14-BS-2037
Proposal title: CM/GC Contractor Project for Stapleton Northfield Campus
Proposals will be received until: October 29, 2013
11:00 a.m., Local Denver Time
at 1350 E. 33rd Ave., Denver, CO 80205
For additional information please contact: Brian Swift
Email Address brian_swift@dpsk12.org
Documents included in this package: Vendor Acknowledgement
Instruction to Vendors
Scope of Work/Specifications
Pricing template
CM/GC Agreement, Exhibits, and General Conditions
Performance and Bid Bond Forms
Drawings

The undersigned hereby affirms that (1) he/she is a duly authorized agent of the Vendor, (2) he/she has read all terms and conditions, technical specifications and all other Contract Documents which were made available in conjunction with this Solicitation and fully understands and accepts them, (3) that the offer is being submitted on behalf of the Vendor in accordance with any terms and conditions set forth in this document, and (4) that the Vendor will accept any awards made to it as a result of the offer submitted herein for a minimum of ninety (90) calendar days following the date of submission.

VENDOR PRINT OR TYPE YOUR INFORMATION

(Include this form in your proposal)

Name of Company: _____ Fax: _____
Address: _____ City/State: _____ Zip: _____
Contact Person: _____ Title: _____ Phone: _____
Authorized Representative's Signature: _____ Phone: _____
Printed Name: _____ Title: _____ Date: _____
Email Address: _____ Approved by: _____ Date: _____

INSTRUCTIONS TO VENDORS

- I. **APPLICABILITY.** These Instruction to Vendors apply, but are not limited, to all bids, proposals, qualifications and quotations (hereinafter referred to as "Offers" or "Responses") made to the Denver Public Schools (hereinafter referred to as "District") by all prospective product and/or service suppliers (hereinafter referred to as "Vendors") in response, but not limited, to Invitations to Bid, Requests for Proposals, Requests for Qualifications, and Requests for Quotations (hereinafter referred to as "Solicitations").

II. CONTENTS OF OFFER

- A. General Conditions. Vendors are required to submit their Offers in accordance with the following expressed conditions:

1. Vendors shall make all investigations necessary to thoroughly inform themselves regarding the project. No plea of ignorance by the Vendor of conditions that exist or that may hereafter exist as a result of failure to fulfill the requirements of the contract documents will be accepted as the basis for varying the requirements of the District or the compensation to the Vendor.
2. Vendors are advised that all District contracts are subject to all legal requirements contained in the District Board policies, the Purchasing Department's procedures and state and federal statutes. When conflicts between the Solicitation and these legal documents occur, the highest authority will prevail.
3. Vendors are required to state exactly what they intend to furnish to the District via this Solicitation and must indicate any variances to the terms, conditions, and specifications of this Solicitation no matter how slight. If variations are not stated in the Vendor's Offer, it shall be construed that the Vendor's Offer fully complies with all conditions identified in this Solicitation.
4. All Offers and other materials submitted in response to this Solicitation shall become the property of the Denver Public Schools.
5. Open Records. The Vendor understands that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, § 24-72-201, et seq., C.R.S. (2006), and that in the event of a request to the District for disclosure of such information, the District shall advise the Vendor of such request in order to give the Vendor the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the District will tender all such material to the court for judicial determination of the issue of disclosure and the Vendor agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The Vendor further agrees to defend, indemnify and save and hold harmless the District, its officers, agents and employees, from any claims, damages, expenses, losses or costs arising out of the Vendor's intervention to protect and assert its claim of privilege against disclosure under this Article including, but not limited to, prompt reimbursement to the District of all reasonable attorney fees, costs and damages that the District may incur directly or may be ordered to pay by such court.

- B. Clarification and Modifications in Terms and Conditions

1. If any Vendor contemplating submitting an Offer under this Solicitation is in doubt as to the true meaning of the specifications, the Vendor must submit a **written request** for clarification to the District's contact person. The Vendor submitting the request shall be responsible for ensuring that the request is received by the District in accordance with the Solicitation Schedule.

Any official interpretation of this Solicitation must be made, in writing, by an agent of the District's Purchasing Department who is authorized to act on behalf of the District.

The District shall not be responsible for interpretations offered by employees of the District who are not agents of the District's Purchasing Department.

The District shall issue a written addendum for substantial changes which impact the technical submission of Offers. Such addenda shall be emailed to all Vendors that have notified the District of their intent to bid on this project. The Vendor shall certify its acknowledgment of the addendum by signing the addendum and returning it with its Offer. In the event of conflict with the original contract documents, addenda shall govern over all Contract Documents to the extent specified. Subsequent addenda shall govern over prior addenda only to the extent specified.

C. Prices Contained in Offer

1. The District is exempt from paying State or Local Sales Taxes. Notwithstanding, Vendors should be aware of the fact that all materials and supplies which are purchased directly by the Vendor in conjunction with this contract will be subject to applicable state and local sales taxes and these taxes shall be borne by the Vendor.
2. The Vendor, by affixing its signature to this Solicitation, certifies that its Offer is made without previous understanding, agreement, or connection either with any persons, firms or corporations making an Offer for the same items, or with the District. The Vendor also certifies that its Offer is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action. To insure integrity of the District's public procurement process, all Vendors are hereby placed on notice that any and all Vendors who falsify the certifications required in conjunction with this section will be prosecuted to the fullest extent of the law.

- D. Qualification of Vendor. Vendor shall be prepared, if so requested by DPS, to present evidence of his experience, qualifications and financial ability to carry out the Contract Documents

III. SOLICITATION: The following activities outline the process to be used to solicit vendor responses and to evaluate each vendor proposal.

Solicitation Schedule:

Distribute Request for Proposal	September 23, 2013
Mandatory Pre-Proposal Meeting	September 27, 2013
Deadline for submitting questions	October 8, 2013
Issue addenda to answer questions	October 14, 2013
Proposal due date deadline	October 29, 2013
Proposal presentations	November 6, 2013
Intent to Award	November 13, 2013
Contract Award (Pending Board Approval)	December, 2013

IV. PREPARATION AND SUBMISSION OF OFFER

A. Preparation

1. All Offers will refer to and contain the information requested in the Scope of Work/Specifications document (included) as well as follow the format as described therein.
2. The Offer must be typed or legibly printed in ink. The use of erasable ink is not permitted. All corrections made by the Vendor must be initialed **in blue ink** by the authorized agent of the Vendor.
3. Offers must contain, **in blue ink**, a signature of an authorized agent of the Vendor in the space provided on the Vendor Acknowledgement. **The original Vendor Acknowledgement of this Solicitation must be included in all Offers.**
4. The accuracy of the Offer is the sole responsibility of the Vendor. No changes in the Offer shall be allowed after the date and time that the Offers are due.

B. Submission

1. The Offer shall be sealed in an envelope with the Vendor's name and the RFP number on the outside. Please furnish one (1) master copy with original signature and three (3) copies, and one (1) electronic copy on CD or flash drive.
2. Unless otherwise specified, when a Pricing form is included as a part of the Solicitation, it must be used when the Vendor is submitting its Offer. The Vendor shall not alter this form (e.g. add or modify categories for posting prices offered) unless expressly permitted in the addendum duly issued by the District. No other form shall be accepted.
3. Offers submitted via facsimile machines or email will not be accepted.

- C. Late Offers. Offers received after the date and time set for the opening shall be considered non-responsive and returned unopened to the Vendor.

V. MODIFICATION OR WITHDRAWAL OF OFFERS

- A. Modifications to Offers. Offers may only be modified in the form of a written notice on company letterhead and must be received prior to the time and date set for the Offers to be opened. Each modification submitted to the District's Purchasing Department must have the Vendor's name and return address and the applicable Solicitation number and title clearly marked on the face of the envelope. If more than one modification is submitted, the modification bearing the latest date of receipt by the District's Purchasing Department will be considered the valid modification.

B. Withdrawal of Offers

1. Offers may be withdrawn prior to the time and date set for the opening. Such requests must be made in writing on company letterhead.
2. Offers may not be withdrawn after the time and date set for the opening for a period of ninety (90) calendar days. If an Offer is withdrawn by the Vendor during this ninety day period, the District may, at its option, suspend the Vendor from the bid list and may not accept any Offer from the Vendor for an eighteen (18) month period following the withdrawal.

VI. REJECTION OF OFFERS

- A. Rejection of Offers. The District may, at its sole and absolute discretion:

1. Reject any and all, or parts of any or all, Offers submitted by prospective Vendors;
2. Re-advertise this Solicitation;
3. Postpone or cancel the process;
4. Waive any irregularities in the Offers received in conjunction with this Solicitation to accept an offer(s) which has additional value or function and/or is determined to be more advantageous to the District; and/or
5. Determine the criteria and process whereby Offers are evaluated and awarded. No damages shall be recoverable by any challenger as a result of these determinations or decisions by the District.

- B. Rejection of a Particular Offer. The District may, at its sole and absolute discretion, reject an offer under any of the following conditions:

1. The Vendor misstates or conceals any material fact in its Offer;
2. The Vendor's Offer does not strictly conform to the law or the requirements of the Solicitation;

3. The Offer does not include documents, including, but not limited to, certificates, licenses, and/or samples, which are required for submission with the Offer in conjunction with the Solicitation.
4. The Offer has not been executed by the Vendor through an authorized signature on the Vendor Acknowledgement.

C. Elimination from Consideration

1. An Offer may not be accepted from, nor any contract be awarded to, any person or firm which is in arrears to the District upon any debt or contract or which is a defaulter as surety or otherwise upon any obligation to the District.
2. An Offer may not be accepted from, nor any contract awarded to, any person or firm which has failed to perform faithfully any previous contract with the District, state or federal government, for a minimum period of three years after this previous contract was terminated for cause.

- D. The District reserves the right to waive any technical or formal errors or omissions and to reject any and all bids, or to award contract for the items hereon, either in part or whole, if it is deemed to be in the best interest of the District to do so.

VII. AWARD OF CONTRACT. The District shall award a contract to a Vendor through the issuance of a Notice of Award. All of the documents included and/or referred to in this Solicitation (the "RFP Documents") are collectively an integral part of the agreement between the Denver Public Schools and the successful Vendor. Accordingly, all Vendors must be thoroughly familiar with these documents and the terms and conditions governing the project. Upon issuance of a Notice of Award, the Vendor must execute, in substantially the same form, the Contract Documents. Awards will be made on individual bundles, with each bundle requiring a separate contract to be executed.

VIII. CONTRACTUAL OBLIGATIONS. The terms and conditions for the design services requested for in this RFP are contained in the RFP Documents, including, but not limited to, the Agreement. The District reserves the right to make non-material changes to the forms of the Agreement and other RFP Documents ("Non-material Changes") before they are executed. Non-material Changes shall not be considered a counter offer by the District and, therefore, all fees and services proposed in this RFP shall remain valid and unchanged.

IX. EVALUATION CRITERIA. An evaluation committee composed of representatives selected by District will perform the evaluation of proposals. The committee shall evaluate statements of qualifications and performance data submitted by the Vendor and may conduct interviews based upon evaluation factors listed in the proposal requirements. Proposals will be evaluated and scored by the committee based on the requirements listed below.

• Past Experience	15
• Pre-Construction Process and Logistics	20
• Project Team	20
• Schedule	20
• Diverse Business Outreach	10
• Pricing Template	15

X. APPEAL OF AWARD. Vendors may appeal by submitting, **in writing**, a detailed request for reconsideration to the District's Construction Purchasing Manager within 72 hours after the Intent to Award is issued.

XII. NEGOTIATIONS

The District reserves the right to conduct negotiations with Vendors and to accept revisions of proposals. During this negotiation period, the District will not disclose any information derived from proposals submitted, or from discussions with other Vendors. Once an award is made, the solicitation file and the proposals contained therein are in the public record.

Scope of Work/Specifications

For CM/GC Contractors

I. INTRODUCTION, BACKGROUND, OVERVIEW AND GOALS

- A. The intent of this project is to provide a new 6-12 School Campus to help with overcrowding and growth in NE Denver . This project will involve coordination with the following entities:
 - a. Denver Public Schools (DPS)
 - b. City and County of Denver, Public Works
 - c. City and County of Denver, Parks and Recreation.
 - d. City and County of Denver Waste Water Management
- B. Due to the size, complexity, and timeline of this project, the School District is inviting proposals from pre-qualified Construction Manager / General Contractors (CM/GCs) to provide pre-construction services and to construct the work.
- C. The School District may select one or more Vendors who will then enter into negotiations towards a final agreement. All selections are the sole discretion of Denver Public Schools.

II. SCOPE OF WORK – Scope of work documents can be found at: <http://sdrv.ms/1dYMo0x>

A. Important Dates

- Start Pre-Construction Services November, 2013
- Substantial Completion Dates:
 - SLC Building: July 1, 2015
 - Commons Building July 1, 2015
 - Gymnasium Building July 1, 2015
 - Landscaping School Site: July 1, 2015
 - Sports Fields & Amenities: July 1, 2015
 - Landscaping Sports Fields Site: July 1, 2015
- Final Completion Dates:
 - SLC Building: August 31, 2015
 - Commons Building August 31, 2015
 - Gymnasium Building August 31, 2015
 - Landscaping School Site: August 31, 2015
 - Sports Fields & Amenities: August 31, 2015
 - Landscaping Sports Fields Site: August 31, 2015

III. ADDITIONAL INFORMATION – Drawing and Specification

Refer to attached narrative

IV. PROPOSAL REQUIREMENTS

All questions must be directed to Brian Swift brian_swift@dpsk12.org by the question due date detailed in this RFP. Any RFP-related contact with Project Management DPS staff is prohibited during the RFP process. All proposal preparation and development costs are to be borne by the Vendor.

All proposals must contain the following information:

Tab A

Vendor Acknowledgement Form

Tab B (Past Experience)

A brief summary of the important characteristics of your firm/team that demonstrate the firm/team's capability to accomplish the scope of work described herein. List projects of similar size and complexity, highlighting previous CM/GC projects, if any, with the District or other school districts. (5 page maximum)

Tab C (Pre-Construction and Site Logistics)

Provide an explanation on how the work will be approached and accomplished. (4 page maximum)

Tab D (Project Team)

The names of the key personnel who will directly provide these services including the identification of the persons who will be directly responsible for the day-to-day work during pre-construction and construction on the project, specifically include the superintendent and project manager. Include a brief resume of these individuals' pertinent experiences and qualifications. (1 page maximum). Additional resumes may be attached as exhibits. Superintendent shall be fully engaged throughout the entire project, including pre-construction services.

Tab E (Schedule)

A project CPM schedule for the services (for Option #1 and Option #2). At a minimum, include the milestones found in the Milestone Schedule in Exhibit A of the Agreement. CM/GC to include a schedule in proposal indicating dates when critical design and permitting milestones need to occur.

Tab F (Diverse Business Outreach)

Describe the utilization of diverse businesses on past school projects within the last three years. Describe the utilization of diverse businesses on projects with other entities within the last three years. Describe your firm's outreach plan relative to the project(s) on which you submit.

Tab G

Pricing Template (next page)

Please respond to the aforementioned items in the order in which they are presented and enumerated accordingly.

V. LIQUIDATED DAMAGES FOR DELAY

The liquidated damages amount to be applied under Section 3.5 of the General Conditions of the Contract for delays in Substantial Completion is \$2,000.00 per day.

The liquidated damages amount to be applied under Section 3.5 of the General Conditions of the Contract for delays in Final Completion is \$1,000.00 per day.

Pricing Template (Tab G)

PROPOSAL

TO: SCHOOL DISTRICT NO 1 IN THE
CITY AND COUNTY OF DENVER
AND STATE OF COLORADO

PROJECT: Stapleton Northfield Campus School 6-12

Locations: 56th Avenue and future Central Park Blvd.

14-BS-2037

Please fill in all blanks below. All capitalized terms are defined within the Agreement and its Exhibits.

- Start Pre-Construction Services _____
- Substantial Completion Dates: _____
 - SLC Building: _____
 - Commons Building _____
 - Gymnasium Building _____
 - Landscaping School Site: _____
 - Sports Fields & Amenities: _____
 - Landscaping Sports Fields Site: _____
- Final Completion Dates: _____
 - SLC Building: _____
 - Commons Building _____
 - Gymnasium Building _____
 - Landscaping School Site: _____
 - Sports Fields & Amenities: _____
 - Landscaping Sports Fields Site: _____

CONTRACTOR FEE

The Pre-Construction Fee (a not-to-exceed fee) shall be the stipulated sum of _____ dollars (\$ _____), payable in installments following the completion of each Design Phase.

Such Pre-Construction Fee includes overhead and profit for the Pre-Construction Services, and Contractor shall not be entitled to any additional overhead or profit for the Pre-Construction Services.

The Construction Fee shall be an amount equal to _____ percent (____%) of the sum of the Direct Hard Costs.

GENERAL CONDITIONS FEE

The General Conditions Fee shall be an amount equal to _____ dollars (\$ _____) for the Construction Work.

CONSTRUCTION MANAGER / GENERAL CONTRACTOR AGREEMENT

This CONSTRUCTION MANAGER / GENERAL CONTRACTOR AGREEMENT (this “**Agreement**”) is entered into this ____ day of _____, 20____, by and between **School District No. 1 in the City and County of Denver and State of Colorado** (the “**Owner**”) and _____ **[full legal name]**, a _____ **[state of formation and type of entity, e.g., “Colorado corporation,” “Colorado limited liability company,” etc.]** (“**Contractor**”).

In consideration of the covenants and agreements contained in the Contract Documents, the sufficiency of which is hereby acknowledged by the Contractor and Owner, Contractor and Owner hereby promise and agree as follows:

Article 1. KEY TERMS; DESCRIPTION OF THE PROJECT

1.1 The Project. The “Project” consists of the planning for and construction of [an addition to] [a remodeling of] [a remodeling of part of] a building [or facility] known as _____.

The principal function of this **[building/facility]** is **[will be]** _____.

Owner’s project number for the Project is _____.

The Project may be further described on **Exhibit A**.

1.2 The Guaranteed Maximum Price. The “**Guaranteed Maximum Price**” shall be determined in accordance with **Article 4** below, subject to further adjustment as provided in this Agreement and the General Conditions of the Contract. **[[Alternative:** The “**Guaranteed Maximum Price**” shall be the amount of \$ _____, subject to adjustment as provided in this Agreement.]]

1.3 Total Price of the Contract. The total amount which Owner shall pay Contractor for the Work to be performed by Contractor hereunder (the “**Contract Sum**”) shall be the actual cost of the Work (“**Cost of Work**”) plus the Contractor Fee, which Contract Sum shall not exceed the Guaranteed Maximum Price. The Cost of Work consists of Direct Hard Costs, Soft Costs and the General Conditions Fee. Expenses to be included in the Cost of Work are set forth in greater detail on **Exhibit B** attached hereto.

1.4 The Contractor Fee. The “**Contractor Fee**” shall be the sum of the Pre-Construction Fee and the Construction Fee.

1.4.1 The “**Pre-Construction Fee**” shall be the stipulated sum of \$ _____, payable in installments following the completion of each Design Phase, as follows:

Programming:	_____ %
Schematic Design Documents:	_____ %
Design Development Documents:	_____ %
Construction Documents	_____ %

The Pre-Construction Fee includes all the compensation Contractor will be entitled to receive for the services to be rendered and activities to be performed under **Articles 3** and **4** below.

1.4.2 The “**Construction Fee**” shall be an amount equal to _____ percent (____%) of the sum of the Direct Hard Costs.

1.5 **General Conditions Fee.** The “**General Conditions Fee**” shall be an amount equal to _____ per [week] [month] of Construction Work. [Or, alternatively:] The General Conditions Fee shall be equal to _____ percent (____%) of the sum of the Direct Hard Costs. [Or, alternatively:] Contractor shall be reimbursed as part of the Cost of Work for actual costs incurred in providing services normally included in general conditions, provided that Contractor shall not be reimbursed for general conditions costs incurred during periods of delay that are not Owner Delay or Excused Delay. Costs for Contractor personnel to be included in the Cost of Work shall be based on hourly rates charged by Contractor for each such person (determined to reimburse Contractor for the salaries and benefits which each person receives), as submitted to Owner and approved in advance by Owner. Any other costs payable to Contractor (as opposed to third parties) for Cost of Work shall be subject to approval of Owner, which approval shall not unreasonably be withheld.

1.6 **The Contract Documents.** The “**Contract Documents**” include:

1.6.1 All written modifications or amendments to this Agreement, including Change Orders;

1.6.2 This Agreement, including all exhibits and attachments;

1.6.3 The General Conditions of the Contract;

1.6.4 Construction Documents prepared and approved in accordance with this Contract;

1.6.5 The following other documents, if any: _____.

The Contract Documents are intended to be complementary, and anything required by any of the Contract Documents shall be as binding as if required by all of the Contract Documents. In the event of inconsistencies in requirements between different parts of the Contract Documents, unless Owner otherwise agrees in writing, Contractor shall provide the better quality or greater quantity, as specified by Owner. In the event of any irreconcilable difference between different provisions of the Contract Documents, the provision or requirement set forth in the Contract Document first appearing in the list above shall control.

1.7 **Contractor’s Role in General; The Work.** Contractor accepts the relationship of trust and confidence established with the Owner by the Contract Documents. Contractor covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect in furthering the interests of the Owner in the efficient and effective design and construction of the Work. Contractor agrees to furnish efficient business administration and superintendence and to use its best efforts to perform the Work in the best and most sound way and in the most expeditious and economical manner consistent with the interests of the Owner. Contractor shall provide leadership among the Owner, Architect and Contractor on all matters relating to construction of the Project.

1.8 **Exclusions.** The scope of the Work shall not include, and Owner shall be responsible for, any items listed on Exhibit C.

Article 2. DEFINITIONS AND INTERPRETATION

2.1 Defined Terms.

- 2.1.1 **Terms Defined in the General Conditions of the Contract.** Initially capitalized terms used but not defined in this Agreement shall have the meanings given them in the General Conditions of the Contract.
- 2.1.2 **Agreement.** This Construction Manager / General Contractor Agreement, including exhibits hereto.
- 2.1.3 **Construction Fee.** Defined in Section 1.4.2.
- 2.1.4 **Contingency.** Defined in Section 4.5.
- 2.1.5 **Contract Sum.** Defined in Section 1.3.
- 2.1.6 **Contract Documents.** Defined in Section 1.6 above.
- 2.1.7 **Contractor Fee.** Defined in Section 1.3 above.
- 2.1.8 **Contractor's Accounting Report.** A final accounting of the Cost of Work, with such detailed backup as Owner may specify in its reasonable discretion, prepared by Contractor.
- 2.1.9 **Cost of Work.** Defined in Section 1.3 below.
- 2.1.10 **Design Development Documents.** Drawings and other documents prepared by the Architect during the Design Development Design Phase intended to establish the size, scope and character of the entire Project.
- 2.1.11 **Design Phase.** Each of the phases of design identified in the Milestone Schedule.
- 2.1.12 **General Conditions Fee.** Defined in Section 1.5.
- 2.1.13 **Guaranteed Maximum Price.** Defined in Section 1.2.
- 2.1.14 **Initial Cost Estimate.** Defined in Section 4.2.1.
- 2.1.15 **Owner Parties.** Defined in Exhibit A.
- 2.1.16 **Owner's Report.** A report specifying any disagreements the Owner has with the amounts set forth in Contractor's Accounting Report in sufficient detail to identify the reasons for such disagreement.
- 2.1.17 **Pre-Construction Fee.** Defined in Section 1.4.1.
- 2.1.18 **Pre-Construction Work.** The parts of the Work to be performed during the Design Phases, as further set forth in Article 3 below.
- 2.1.19 **Preliminary Budget.** A preliminary budget showing the estimated cost of the Project (including a breakdown of the design and engineering expense and a preliminary breakdown of the construction cost) at a total cost not to exceed the Guaranteed Maximum Price.

- 2.1.20 **Preliminary Construction Documents.** A preliminary draft of all Construction Documents prepared by the Architect, consisting of a complete set of documents, but approximately fifty percent (50%) detailed.
- 2.1.21 **Program.** A written statement of the Owner's requirements for the Work and an outline proposal for the Work to satisfy those requirements, which may be accompanied by other documents describing and depicting in a general manner the scope and scale of the Work.
- 2.1.22 **Project.** Defined in Section 1.1 above and Exhibit A.
- 2.1.23 **Retainage.** Defined in Section 5.4.
- 2.1.24 **Schematic Design Documents.** Documents describing and depicting the general design of the Project, prepared during the Schematic Design Phase.
- 2.1.25 **Second Cost Estimate.** Defined in Section 4.3.1.
- 2.1.26 **Self-Work.** Any of the types of Work described on Exhibit D and any other part of the Work as to which Owner consents in writing to performance by Contractor as Self-Work (which consent shall not unreasonably be withheld) to the extent that such work is actually directly performed by Contractor and is not performed through a Subcontractor.
- 2.1.27 **Submission.** Each set of Work Product to be submitted by Architect during each Design Phase.

Article 3. PRE-CONSTRUCTION WORK

- 3.1 **Phased Design.** The design of the Project shall take place in phases as set forth in the Milestone Schedule.
- 3.2 **Leadership and Coordination.** During the Design Phases, Contractor shall attend regularly scheduled meetings with the Architect. Contractor shall advise the Architect and Owner on matters relating to construction, including construction costs and logistics, selection of materials, building systems and equipment, and site use and improvements. Contractor shall provide recommendations relating to construction feasibility, availability of materials and labor, time requirements for installation and construction and factors related to cost, including costs of alternative designs or materials, preliminary budgets and possible economies. Contractor shall review all preliminary documents provided by the Architect.
- 3.3 **Site Investigation.**
- 3.3.1 Contractor acknowledges that Owner's record drawings occasionally contain errors and omissions. Architect is responsible to field verify existing Site conditions as necessary for the preparation of Architect's Work Product; however, Contractor shall promptly report to Architect and Owner any Site conditions that Contractor actually observes to vary from the information provided in existing record drawings and specifications and any actually observed Site conditions which the Contractor believes indicate an increased likelihood of concealed conditions that would adversely affect construction time or cost.
- 3.3.2 Contractor shall investigate and evaluate the Site and field-verify measurements in the Construction Documents in accordance with the General Conditions of the Contract.

3.4 Design Review.

- 3.4.1 Contractor's Project Manager and other appropriate Contractor personnel shall review and comment on all documents prepared by Architect and its consultants, so that the design of the Project is informed by Contractor's expertise. Contractor shall conduct a formal review of the Schematic Design Documents, Design Development Documents, Preliminary Construction Documents and Construction Documents as they are being prepared. Contractor shall suggest alternative solutions for design elements that affect the feasibility of construction and the time or cost to complete the Project; provided, however, that Contractor does not hereby assume any of the Architect's customary responsibilities for design. The principal purposes of Contractor's review are to identify and eliminate features of the Architect's Work Product that conflict or may be subject to misinterpretation, to assure proper coordination, accuracy and completeness of such documents, to permit Contractor to evaluate the cost and time to construct the Project, to enable the Contractor to prepare for a rapid transition to the Construction Phase, and to assure proper coordination, accuracy and completeness of the documents. Contractor's reviews shall address estimated cost, completeness of design, coordination of documents, and construction feasibility and work phasing and shall include detailed reviews of the mechanical, plumbing and electrical work described in the Work Product.
- 3.4.2 Within the time period provided in the Project Schedule and Milestone Schedule, Contractor shall submit to Owner and Architect a written report of its evaluation of each submittal by Architect, including Contractor's evaluation of each of the matters identified in Section 3.4.1 above, and recommended revisions and/or value engineering proposals. Without assuming the Architect's responsibility for design and design coordination, Contractor shall verify that all identified deficiencies and/or revisions authorized by the Owner are acknowledged by the Architect and incorporated in all subsequent documents presented and in the final Construction Documents.
- 3.4.3 Without limiting the generality of the foregoing provisions, to the fullest extent permitted by applicable law, Owner specifically disclaims any warranty that the Work Product submitted by the Architect (including the Construction Documents) can be constructed for the Guaranteed Maximum Price or at all, and Contractor acknowledges that Owner is relying on Contractor to make its own evaluation of the Architect's submittals as further provided herein and to advise Owner with respect to the same.

- 3.5 Construction Planning.** Contractor shall analyze the types, quantity and availability of appropriate categories of labor and materials required for various phases of the Project. Contractor shall make recommendations to the Owner and the Architect regarding the division of the Work in the Work Product to facilitate the bidding and awarding of subcontracts and to allow for phased construction, taking into consideration such factors as time of performance, availability of labor, overlapping trade jurisdictions, provisions for temporary facilities and other matters. Contractor shall recommend for purchase long-lead time items to ensure their delivery by the dates they will be required pursuant to the Project Schedule. If specifically so directed in writing by Owner, Contractor shall proceed to order such items. Owner and Contractor shall use reasonable efforts to identify during the Design Phases any separate work at the Project that will be performed by Owner's other contractors at the same time as the Construction Work.

- 3.6 Pre-Bidding Activities.** Contractor shall prepare pre-qualification criteria for prospective Subcontractors and develop Subcontractor interest in the Project. As working drawings and specifications are completed, Contractor shall establish bidding schedules and conduct pre-bid conferences to familiarize bidders with bidding documents, management techniques anticipated to be used in the Project and any special systems, materials or methods relevant to the Project. Subcontracts shall be subject to competitive bidding as provided in the General Conditions of the Contract.

- 3.7 General Approval Requirement.** The design and the structural, mechanical, and electrical systems for the Project, including the materials and equipment to be used in the Project, shall be subject to approval by Owner. No approval or acceptance of any Work Product given by Owner shall in any way constitute a representation, warranty or waiver of Owner as to the adequacy or sufficiency thereof, and no such approval, acceptance or direction shall be deemed to relieve Contractor of any of its responsibilities under the Contract Documents.
- 3.8 AHJ.** Owner shall designate whether the Project shall be subject to the jurisdiction of the State of Colorado, the City and County of Denver, or both for the purposes of building permits and approvals. Owner shall make such designation by the time it approves the Design Development Documents or, if Design Development Documents are not included in the Design Phases, by the time Owner approves the Construction Documents.
- 3.9 Coordination With Owner's Separate Consultants.** Contractor shall cooperate with other consultants who may be employed by Owner to check the plans, specifications, and the Work and shall furnish information and data used by Contractor in making design decisions to such consultants and Owner.

Article 4. DEVELOPMENT OF THE BUDGET – ESTABLISHMENT OF THE GUARANTEED MAXIMUM PRICE

4.1 Preliminary Estimating and Value Engineering.

- 4.1.1 During the development of the Program (or, if the Program predates this Agreement, promptly after the execution of this Agreement), Contractor shall review and evaluate the Owner's budget, prepare a Preliminary Budget based on the Program, and submit the same to Owner and Architect. Contractor shall revise the Preliminary Budget based on the Schematic Design Documents. Contractor shall annotate the Preliminary Budget to identify items regarding which Contractor recommends cost-saving approaches to the design or construction of the Project.
- 4.1.2 During the Design Development phase, Contractor shall review and analyze the systems and materials being considered for inclusion in the design to evaluate which systems and materials would produce the greatest value for the least cost, including life cycle analysis. Contractor shall provide a written report of this analysis to Owner and Architect identifying options for alternative systems and materials and the costs and the impact to the Project associated with each option. Contractor shall meet with Owner and Architect and assist them in evaluating all such options. Contractor shall keep a log of such alternatives presented and the selections made by Owner and shall periodically keep Owner and Architect apprised of selections remaining to be made so that selections can be made within a period of time that will enable the Architect to incorporate such selections into the Design Development Documents. Incomplete selections may be included in the Design Development Documents as alternates.

4.2 Initial Cost Estimate and GMP Adjustment

- 4.2.1 Promptly after Owner has approved the Design Development Documents, Contractor shall prepare and deliver to Owner an estimate of the total cost to design and construct the Work, including the estimated Cost of Work and all Contractor Fees, Soft Costs, the Contingency, and all other costs which have been or are expected to be incurred in completing the Work provided for by Design Development Documents (the "**Initial Cost Estimate**").
- 4.2.2 Owner, at Owner's option, may either (i) approve the Initial Cost Estimate in writing, in which event the Guaranteed Maximum Price shall be established in the amount of the

Initial Cost Estimate or adjusted to equal the amount of the Initial Cost Estimate, as applicable, or (ii) elect to eliminate or revise one or more elements shown on the Design Development Documents to reduce the projected cost of the Work.

- 4.2.3 If Owner elects to attempt to reduce the cost of the Work by eliminating or revising one or more items shown on the Design Development Documents so as to reduce the Cost Estimate, Contractor shall advise and assist Owner and Architect in identifying elements of the Design Development Documents which might successfully be revised or eliminated so as to reduce the Cost of Work and in recommending ways in which such revision or elimination might be implemented to achieve that effect. When the Owner has selected revisions and eliminations and the Architect has revised the Design Development Documents accordingly, Contractor shall review the revised documents and submit a revised Initial Cost Estimate based thereon. This process shall be repeated until Owner has approved the revised Design Development Documents and revised Initial Cost Estimate. When the revised Initial Cost Estimate has been approved by Owner, the Guaranteed Maximum Price shall be increased or decreased by Agreed Change to equal the amount of the revised Initial Cost Estimate.
- 4.2.4 If the design schedule for the Project does not include Design Development Documents, the Preliminary Construction Documents shall be used for the preparation of the Initial Cost Estimate and references in this Section 4.2 to Design Development Documents shall be construed to refer to the Preliminary Construction Documents.

4.3 Second Cost Estimate and GMP Adjustment.

- 4.3.1 Promptly after Contractor has received bids for the Construction Work from Subcontractors and Suppliers, Contractor shall prepare and deliver to Owner a revised estimate of the Cost of Work and all Contractor Fees, Soft Costs, and all other costs which have been or are expected to be incurred in completing the Work provided in the Construction Documents (the **"Second Cost Estimate"**).
- 4.3.2 Owner, at Owner's option, may either (i) approve the Second Cost Estimate in writing, in which event the Guaranteed Maximum Price shall be adjusted to equal the amount of the Second Cost Estimate, or (ii) elect to eliminate or revise one or more elements shown on the Construction Documents to reduce the projected cost of the Work.
- 4.3.3 If Owner elects to attempt to reduce the cost of the Work by eliminating or revising one or more items shown on the Construction Documents so as to reduce the Second Cost Estimate, Contractor shall advise and assist Owner and Architect in identifying elements of the Construction Documents which might successfully be revised or eliminated so as to reduce the Cost of Work and in recommending ways in which such revision or elimination might be implemented to achieve that effect. When the Owner has selected revisions and eliminations and the Architect has revised the Construction Documents accordingly, Contractor shall review the revised documents and submit a revised Second Cost Estimate based thereon. This process shall be repeated until Owner has approved the revised Construction Documents and revised Second Cost Estimate. When the revised Second Cost Estimate has been approved by Owner, the Guaranteed Maximum Price shall be increased or decreased by Agreed Change to equal the amount of the revised Second Cost Estimate.

4.4 Schedule of Values.

- 4.4.1 The Initial Cost Estimate and Second Cost Estimate shall each include a Schedule of Values showing the breakdown of the total cost of the Project. The Schedule of Values shall separately specify each category of Direct Hard Costs, each category of Soft Costs, the Contractor Fee, and each other category of costs included in the total cost shown on

the cost estimate. The amount shown in each category shall be the most accurate category allocation of the total estimated cost into such categories that Contractor is able to make based on the cost information then available to Contractor.

- 4.4.2 Although Contractor shall perform the Work for no more than the Guaranteed Maximum Price, the line-item breakdown of the Guaranteed Maximum Price provided on the Schedule of Values is not guaranteed, and Contractor has no obligation to keep costs for any line item within the amount specified in the Schedule of Values.

4.5 Contingency.

- 4.5.1 The Guaranteed Maximum Price will include a sum acceptable to both Owner and Contractor for unforeseen contingencies (the “**Contingency**”).
- 4.5.2 The Contingency is an amount to cover unforeseen conditions and events not apparent as of the time of the establishment of the Guaranteed Maximum Price by Owner and Contractor. Contractor must obtain Owner’s written approval prior to billing against the Contingency (or any part thereof) and will supply Owner with detailed information relative to such proposed billing. Owner’s approval of such billing shall not unreasonably be withheld.
- 4.5.3 Contractor may only request approval to bill against the Contingency (or any part thereof) to defray an actual Cost of Work for which Contractor is not otherwise entitled under the Contract Documents to an Agreed Change increasing the Guaranteed Maximum Price, except as otherwise provided in Articles 15 or 16 of the General Conditions of the Contract.
- 4.5.4 The Contingency shall not be used for any of the following purposes:
 - 4.5.4.1 to pay for costs resulting from Contractor’s errors or omissions in performance of the Work;
 - 4.5.4.2 to pay for acceleration of the Work to meet the requirements of the Milestone Schedule; or
 - 4.5.4.3 to pay for changes requested by Owner, provided, however, that the Contingency may be used to pay for actual costs of Work rendered necessary because of unforeseen conditions of the Site.
- 4.5.5 Costs of deductibles under Builder’s Risk insurance policies may be charged to the Contingency if the amount of the deductible was approved by the Owner before a loss. If the amount of the deductible was not approved by the Owner before the loss, Contractor shall be responsible to pay such deductible out of its own funds.
- 4.5.6 From a cost accounting standpoint, as Contingency funds are used, appropriate entries shall be made, removing funds from the Contingency and moving such amounts to the line items in the Schedule of Values to which they are charged, thereby including such amounts in the Cost of Work, but without altering in any way the Guaranteed Maximum Price.

Article 5. PROGRESS PAYMENTS

- 5.1 Applications for Payment.** In addition to the documents and information required by the General Conditions of the Contract, Contractor’s Applications for Payment shall include the cost reports described in Section 5.5, the Schedule of Values, a statement in form approved by Owner

setting forth (A) the percentage of the Work completed and the materials stored on the Site for the period ending the last day of the month for which the Progress Payment is requested for each category of the Schedule of Values, (B) the actual costs incurred for that portion of the Work, (C) the amount previously paid under the Contract, (D) the amount previously retained, (E) the net amount to be paid on the current Progress Payment (less applicable Retainage, as defined in Section 5.4 below), and (F) the amount of the Guaranteed Maximum Price remaining unpaid if the requested payment is made in full.

5.2 Invoicing for Pre-Construction Work.

- 5.2.1 Before the commencement of Construction Work, Contractor may submit invoices for installments of the Pre-Construction Fee as they become payable without including all of the materials required to be included in Applications for Payment by Section 5.1 above and the General Conditions of the Contract. The representations and warranties that apply to Applications for Payment under the General Conditions of the Contract shall apply to such invoices.
- 5.2.2 If such an invoice is properly submitted on or before the day of the month set by Owner in accordance with the General Conditions of the Contract for the submission of Applications for Payment, payment shall be due within thirty (30) days thereafter. If such an invoice is submitted after the day it is due, payment shall be due within thirty (30) days after the next month's date for submission of Applications for Payment. Such payment obligations shall be subject to Owner's right to withhold payments as provided in the General Conditions of the Contract.
- 5.2.3 If Owner requires Contractor to perform any testing or exploratory demolition of the Site for which Contractor is entitled to reimbursement under Exhibits A and B, such costs may be included in Contractor's pre-construction invoices as Soft Costs if allowed under Exhibit A, provided that for all such costs, Contractor shall submit the following: (a) a schedule listing the invoices received for such costs through the end of the period billed; (b) a breakdown for each invoice showing (1) the contract amount or other expected total amount of the Work to be performed by the Subcontractor, (2) the portion of such work that has then been performed, and (3) the amount of such total amount that the Subcontractor has then earned under its contract with Contractor; and (c) the amount of the invoice that Contractor is then obligated to pay under its contract with such Subcontractor.
- 5.2.4 Portions of the Pre-Construction Fee and any reimbursable costs invoiced under this Section 5.2 shall be shown as previously invoiced amounts in the appropriate categories of the Schedules of Values submitted with later Applications for Payment as if the invoices had been complete Applications for Payment.

5.3 Amount of Progress Payments.

- 5.3.1 The net amount to be paid on the current draw shall be the lesser of the actual costs incurred by Contractor in relation to the portion of the Work reflected in the Application for Payment (less applicable Retainage), or the amount which is the sum of the product obtained for each category shown on the Schedule of Values by multiplying the percentage of such Work which has been completed by the total amount for such Work on the Schedule of Values (less applicable Retainage).
- 5.3.2 Each Application for Payment for Construction Work shall include the payment of the applicable portion of the Construction Fee.

5.3.2.1 If the Construction Fee is defined in the Agreement as a percentage of Direct Hard Costs, the portion of the Construction Fee to be included in each Application for Payment shall be the same percentage of the Direct Hard Costs properly included in such Application for Payment (less applicable Retainage).

5.3.2.2 If the Construction Fee is defined in the Agreement as a stipulated sum, the portion of the Construction Fee to be included in each Application for Payment shall be that proportion thereof equal to the percentage of completion of the Work properly included in such Application for Payment (less applicable Retainage).

5.4 Retainage. Until the Work has been completed and all conditions to Final Payment have been satisfied, Owner shall be entitled to retain, from each Progress Payment ten percent (10%) of the value of each line item of Direct Hard Costs that are billed in each corresponding Application for Payment, together with the percentage of Contractor Fee payable with respect to each of the Direct Hard Costs components of the Cost of Work (the "**Retainage**"); provided, however, that Owner shall not withhold Retainage from Progress Payments made after the Work is fifty percent (50%) complete so long as, in the opinion of Architect and Owner's Project Manager, satisfactory progress is being made in the Work.

5.5 Cost Reports. Contractor shall deliver to Owner with each Application for Payment:

5.5.1 Current invoices from Contractor and all Subcontractors and Suppliers who have contributed to the Work; and

5.5.2 Any other evidence reasonably requested by Owner to demonstrate that cash disbursements already made by Contractor on account of the Cost of Work equal or exceed (a) Progress Payments already received by Contractor, less (b) that portion of those Progress Payments attributable to the Contractor Fee.

5.6 Accounting Review. Promptly following Final Completion of all of the Work, Contractor shall submit to Owner the Contractor's Accounting Report. Owner and/or Owner's accountants shall review Contractor's Accounting Report within one hundred twenty (120) days after delivery of Contractor's Accounting Report to Owner, and during such period, Contractor shall promptly submit such additional backup as Owner shall from time to time reasonably request. Within such one hundred twenty (120) day period after Owner receives Contractor's Accounting Report, Owner shall either (i) notify Contractor that Owner approves Contractor's Accounting Report without change or (ii) deliver to Contractor Owner's Report. If Owner accepts Contractor's Accounting Report, Owner shall make Final Payment to Contractor by the end of such one hundred twenty (120) day review period after Owner's receipt of Contractor's Accounting Report.

5.7 Difference in Amounts.

5.7.1 If Owner's Report determines the Cost of Work as substantiated by Contractor's final accounting to be less than claimed by Contractor, Contractor may either accept the amount specified by Owner's Report or object thereto and state the amount which Contractor has determined to be owing, which shall not be greater than the amount shown in Contractor's Accounting Report.

5.7.2 Contractor may object to Owner's Report by giving notice of such objection to Owner within sixty (60) days after Contractor's receipt of Owner's Report. Any such objection shall state and describe the basis for Contractor's objections in sufficient detail to identify the reasons for such objection. Failure of Contractor to object to the determination of the amount of Final Payment contained in Owner's Report within such sixty (60) day period shall be the acceptance thereof by Contractor, in which event that amount shall be

binding on Contractor and shall be paid to Contractor within twenty (20) business days after Contractor accepts the same or is deemed to have accepted the same.

- 5.7.3 If Contractor timely objects to Owner's Report, Contractor and Owner shall attempt to agree on a resolution of Contractor's objection. If no such resolution has then been made within thirty (30) days after Contractor submits its objection, the issue shall be an Arbitration Dispute and Contractor shall be entitled to submit the same to Arbitration within forty-five (45) days following Contractor's submission of its objection. If Contractor does not submit the issue to Arbitration in such time and manner, Contractor shall be deemed to have waived its objection, in which event the amount provided in Owner's Report shall be deemed to have been accepted by Contractor and shall be paid by Owner within twenty (20) business days after Contractor accepts or is deemed to have accepted Owner's Report.

Article 6. SUBCONTRACT BIDDING

6.1 Subcontractors and Suppliers; Bidding.

- 6.1.1 All portions of the Work not to be performed directly by Contractor shall be performed through Subcontractors obtained by Contractor pursuant to a competitive bidding procedure in accordance with the requirements of the Agreement and these General Conditions of the Contract. Contractor shall obtain bids from Subcontractors and from Suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to Owner. Owner may designate specific persons or entities from whom Contractor shall obtain bids; provided that Owner may not prohibit Contractor from obtaining bids from others.
- 6.1.2 Contractor shall select the lowest responsive qualified bidder selected through such competitive bidding process; provided that, subject to the provisions of Section 6.2, Contractor may use a specific Subcontractor which is not the lowest qualified bidder for a portion of the Work with the written approval of Owner (which shall not be unreasonably withheld) after full disclosure.
- 6.1.3 Unless otherwise consented to in writing by Owner after full disclosure, no Subcontractor, Sub-subcontractor, or Supplier shall be a party in which Contractor (or any of its executive personnel) has a direct or indirect ownership interest or other similar affiliation with Contractor; provided that nothing contained in this sentence shall prohibit Contractor from using a Subcontractor, Sub-subcontractor, or Supplier which is also working or has worked with Contractor on other projects, so long as the relationship on other projects has been disclosed to Owner, Owner does not object to the use of such Subcontractor, Sub-subcontractor, or Supplier, and the dealings with such Subcontractor, Sub-subcontractor, and Supplier under the Contract are wholly separate from such dealings on other projects.
- 6.1.4 Owner may object to any bidder by giving Contractor written notice of such objection within five (5) days after receiving the bids from Contractor. Except as otherwise provided above in this Section 6.1, Contractor shall be free to contract with any of the bidders to which Owner does not object.

- 6.2 Elimination of Certain Subcontractors and Sub-subcontractors.** If a specific bidder among those whose bids are delivered by Contractor to Owner (i) is recommended to Owner by Contractor; (ii) is qualified to perform that portion of the Work; and (iii) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions and Owner has not objected to such bidder pursuant to Section 6.1.4, but Owner requires that such bidder's bid be rejected, then Contractor shall use the Subcontractor designated by Owner, and if the bid of the Subcontractor designated by Owner is higher than that of the Subcontractor

otherwise selected by Contractor, the difference shall be charged to Owner and an Agreed Change issued to reflect such additional cost.

Article 7. MISCELLANEOUS

- 7.1 Claims for Damages.** Should either party suffer injury or damage to persons or property because of any act or omission of the other party or of any of its employees, agents, or others for whose acts it is legally liable, a claim shall be made in writing to such other party, with a copy to the Architect, within the time period required by the express terms of this Agreement and the General Conditions of the Contract, or if not specified in this Agreement or the General Conditions of the Contract, within a reasonable time after such injury or damage.
- 7.2 Assignment; Successors and Assigns.** Neither party to the Contract shall assign it or subcontract it as a whole without the written consent of the other. The Contractor shall not assign its interest in any amounts due or to become due to it under the Contract without the written consent of the Owner. Subject to the foregoing provisions of this Section, the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- 7.3 Entire Agreement.** This Agreement, the General Conditions of the Contract, any other Contract Documents, and all exhibits thereto constitute the entire agreement between the parties with respect to the Project and all prior proposals are hereby terminated.

[The remainder of this page is intentionally blank.]

Signature page to Construction Manager / General Contractor Agreement:

Executed to be effective as of the date first written above.

[Signature block for corporation as contractor:]

(CORPORATE SEAL)

Contractor:

[Fill in full legal name of entity,] a Colorado corporation [if the entity was formed in another state, identify that state instead]

ATTEST:

By: _____ Date: _____
Print Name: _____
Title: _____

By: _____ Date: _____
Print Name: _____
Title: _____

[Signature block for other entity:]

Contractor::

[Fill in full legal name of entity,] a Colorado [state type of entity: limited liability company, limited liability partnership, etc.] [if the entity was formed in another state, identify that state instead]

By: _____ Date: _____
Print Name: _____
Title: _____

[Owner signatures appear on the following page]

Signature page to Construction Manager / General Contractor Agreement:

APPROVED AS TO FORM IN BEHALF OF
SCHOOL DISTRICT NO. 1:

Date: _____
Print Name: _____
Associate Executive Director of Facilities

Date: _____
Office of the General Counsel

Date: _____
Print Name: _____
Executive Director, Facility Management

Date: _____
Print Name: _____
Chief Operating Officer

(S E A L)

**SCHOOL DISTRICT NO. 1
IN THE CITY AND COUNTY OF DENVER
AND STATE OF COLORADO**

ATTEST:

Date: _____
Print Name: _____
Secretary, Board of Education

By: _____ Date: _____
Print Name: _____
Secretary, Board of Education

TABLE OF EXHIBITS

- A. Project Information and Certain Key Terms
- B. Expenses Included in Cost of Work
 - B-1. Method of Payment Matrix
- C. Schedule of Exclusions
- D. Schedule of Permitted Self-Work
- E. Arbitration Process
- F. Equal Opportunity Construction Contracting Procedures
- G. Schedule Requirements
- H. General Conditions of the Contract
- I. Supplementary General Conditions of the Contract (if any)
- J. Federal Funding Provisions (if applicable)
 - J-1. Wage Determination (if applicable)

CONSTRUCTION MANAGER / GENERAL CONTRACTOR AGREEMENT

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EXHIBIT A – PROJECT INFORMATION AND CERTAIN KEY TERMS

Project Name: _____ Project No. _____

Contractor: _____

1. GENERAL DESCRIPTION OF PROJECT:

[Insert a narrative description of the scope of the project. If there is a separate written document that describes the scope of the project, a cross-reference may be included here so long as it is unambiguous (include document dates, authors, etc.) and the document should be attached if practicable or clearly identified as a Contract Document.]

2. MILESTONE SCHEDULE

BOE Approval of Construction Contract:

Design Phases:

Programming:

Submission of Program:

Submission of Schematic Design Documents:

Completion of Schematic Design Review:

Submission of Design Development Documents:

Completion of Design Development Review:

Submission of Preliminary Construction Documents:

Completion of Preliminary Construction Documents Review:

Submission of Construction Documents:

Completion of Construction Documents Review:

Construction Phase:

Building Permit Granted:

Required Substantial Completion Date:

Required Final Completion Date:

The Project Schedule to be prepared based on the above Milestone Schedule must allow at least ten (10) business days for Owner review of any Submissions, plus time for Architect and Contractor to respond to Owner comments and for Architect to revise and resubmit Submissions if required.

3. PROJECT TEAM

The key members of the Project Team provided by Contractor include:

Contractor's Project Manager: _____

[Add others, if there will be more.]

4. ADDITIONAL LIABILITY INSURANCE COVERAGE REQUIREMENTS

Umbrella or Excess Following Form Insurance: \$3,000,000 per occurrence and in the aggregate. (See Section 12.1.7 of the General Conditions of the Contract.)

Pollution Liability Insurance: ☒ Not required initially (Owner may later require as provided in Section 12.4 of the General Conditions of the Contract).
☐ Minimum limits of \$_____ per occurrence and in the aggregate (see Section 12.4 of the General Conditions of the Contract).

5. LIQUIDATED DAMAGES FOR DELAY

5.1 **[[OPTION 1 – escalating damages:** The liquidated damages amounts to be applied under Section 3.5 of the General Conditions of the Contract for delays in Substantial Completion are as follows:

\$_____ per day for each of the first ____ days after the Required Substantial Completion Date.

\$_____ per day for the ____ through the ____ day after the Required Substantial Completion Date.

\$_____ per day for the ____ day after the Required Substantial Completion Date and each day thereafter until the Work is Substantially Complete.

]]

[[OPTION 2 – flat rate: The liquidated damages amount to be applied under Section 3.5 of the General Conditions of the Contract for delays in Substantial Completion is \$_____ per day.

]]

5.2 The liquidated damages amount to be applied under Section 3.5 of the General Conditions of the Contract for delays in Final Completion is \$500.00 per day.

6. FEDERAL FUNDING

If this box is checked, ☐ Owner expects to pay for the Project using funds from United States government sources, and Section 4.17 of the General Conditions of the Contract, the provisions of Exhibit J, and the wage determination attached as Exhibit J-1 shall apply to the Project.

7. COP REQUIREMENTS

If this box is checked, ☐ then (i) Owner Parties shall include, in addition to the parties otherwise identified in this Agreement, Denver Public Schools Leasing Corporation and J.P. Morgan Trust Company, National Association, (ii) Contractor acknowledges that Owner under this Agreement is the tenant of the Project site and Denver Public Schools Leasing Corporation is the owner, and (iii) unless Owner and Contractor otherwise agree in writing, Owner shall be responsible to obtain from the property owner all consents and approvals required under the lease of the Site with respect to the Project.

8. TESTING

Contractor shall perform such pre-construction testing and investigations as may be requested by Owner or Architect, including selective exploratory demolition. Contractor's out-of-pocket costs of such testing (but not any related overhead or administrative costs) shall be Soft Costs reimbursable in accordance with the provisions of the Contract. Contractor shall not be entitled to any increase in the Pre-Construction Fee on account of such testing.

Contractor shall with due diligence study and evaluate all testing reports furnished by Owner, Architect, or their consultants, and any reports obtained by Contractor. Contractor shall advise Owner and Architect of any impact of such reports on the construction and contemplated utilization of the Project. Contractor shall not be held responsible for the accuracy of Owner-furnished information, provided that Contractor shall notify Owner of any inaccuracy or incompleteness in information furnished by the Owner that is apparent in the exercise of reasonable professionally diligent review.

9. AS-BUILTS

Thirty (30) days after Substantial Completion, Contractor shall deliver to Architect _____ (____) complete sets of As-BUILTs.

10. NOTICE ADDRESSES OF THE PARTIES

Address for notices to Owner:

[with a copy to:]

Address for notices to Contractor:

EXHIBIT B – EXPENSES INCLUDED IN COST OF WORK

1. Reimbursable Direct Hard Costs

1.1 Direct Labor Costs

- 1.1.1 Wages of construction workers directly employed by Contractor to perform the Self-Work in the physical construction of the Project at the Site or, with Owner's approval, at off-site workshops.
- 1.1.2 Costs actually paid or incurred by Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, only to the extent such costs are based on wages and salaries included in the Cost of Work under Subparagraph 1.1.1 above.

1.2 Subcontract Costs for Labor and Materials

- 1.2.1 Payments made by Contractor to Subcontractors and Suppliers for labor and materials used in the physical construction of the Project in accordance with the requirements of such third-party contracts.

1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

- 1.3.1 Costs, including transportation and storage, of materials and equipment incorporated in the completed construction.
- 1.3.2 Costs of materials described in the preceding Subparagraph 1.3.1 in excess of those actually installed but required to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become Owner's property at the completion of the Work or, at Owner's option, shall be sold by Contractor. Any amounts realized from such sales shall be credited to Owner as a deduction from the Cost of Work.

1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

- 1.4.1 Costs of equipment and hand tools not customarily owned by construction workers that are provided by Contractor at the Site and fully consumed in the performance of the Work; and cost less residual value of such items if not fully consumed, whether sold to others or retained by Contractor. Cost for items previously used by Contractor shall mean fair market value.
- 1.4.2 Cost less residual value (or market rate rental costs) of other temporary facilities used on the Site in connection with the physical construction of the Work, except to the extent that Exhibit B-1 allocates those costs to the General Conditions Fee or other categories of costs.
- 1.4.3 Costs of removal of debris from the Site.

2. Reimbursable Soft Costs

2.1 Governmental Fees and Taxes.

2.1.1 Sales, use, or similar taxes imposed by a governmental authority that are related to the Construction Work for which neither Contractor nor Owner is able to obtain exemption.

2.1.2 Fees and assessments for permits, licenses, water taps, and inspections that the Contract Documents require Contractor to pay for.

2.2 **Costs of Testing.** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by other provisions of the Contract Documents.

2.3 **License Fees.** Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents. If such royalties, fees, and costs are excluded by other provisions of the Contract Documents, then they shall not be included in the Cost of Work.

2.4 **Lost Deposits.** Deposits lost for causes other than Contractor's negligence or failure to fulfill a specific responsibility to Owner as set forth in the Contract Documents.

2.5 **Insurance and Bonds.** Premiums for insurance coverage that the Contract Documents require Contractor to carry and bonds the Contract Documents require Contractor to furnish shall be Soft Costs unless Exhibit B-1 provides otherwise.

3. Other Costs and Emergencies.

3.1 Other costs incurred in the performance of the Work shall be allowed if and to the extent approved in advance in writing by Owner and shall be categorized as provided in such written approval or, if not categorized there, by reference to the definitions of Direct Hard Costs and Soft Costs in the General Conditions of the Contract, this Exhibit B, and Exhibit B-1.

3.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property, except to the extent the emergency arose or was not avoided because of Contractor's fault or negligence. Such costs shall be categorized by reference to the definitions of Direct Hard Costs and Soft Costs in the General Conditions of the Contract, this Exhibit B, and Exhibit B-1; provided, however, that any remaining Contingency shall be used to pay such costs before Contractor is allowed any adjustment in the Guaranteed Maximum Price for the balance.

4. Costs Covered by General Conditions Fee

The General Conditions Fee includes those items identified on Exhibit B-1 as General Conditions. No costs identified on Exhibit B-1 as General Conditions costs shall be reimbursable as Direct Hard Costs or Soft Costs, notwithstanding anything to the contrary herein.

5. Costs Not to be Reimbursed

No reimbursement or additional compensation shall be due to Contractor for any category of costs listed on Exhibit B-1 as compensated through the Contractor Fee. Costs to be excluded from the Cost of Work include:

- 5.1 Salaries and other compensation of Contractor's personnel stationed at Contractor's principal office or offices other than the site office, except to the extent, if any, specifically provided in Paragraph 1.1 of this Exhibit.
- 5.2 Expenses of Contractor's principal office and offices other than the Site office (if any).
- 5.3 Overhead and general expenses, except to the extent otherwise expressly provided in this Exhibit and Exhibit B-1.
- 5.4 Contractor's capital expenses, including interest on Contractor's capital employed for the Work.
- 5.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 1.4 of this Exhibit.
- 5.6 Costs due to the negligence or failure to fulfill a specific responsibility of Contractor, Subcontractors, Sub-subcontractors, and Suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including costs for the correction of damaged, defective, or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 5.7 Any cost not specifically and expressly described in Paragraphs 1 through 3 (and, if the Agreement allows for reimbursement of actual General Conditions costs, Paragraph 4) of this Exhibit.
- 5.8 Costs, other than costs included in Change Orders approved by Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- 5.9 Costs of overtime and similar measures required pursuant to Section 3.6 of the General Conditions of the Contract, except to the extent specifically otherwise provided in that Section.

6. Owner Expenses

Owner shall be responsible to pay amounts due, if any, for items identified on Exhibit B-1 as "Owner Expense" directly to the parties to whom such amounts are due. The identification of an item as an "Owner Expense" shall not be construed to exclude that item from the scope of the Work if it is required by other Contract Documents, and expenses paid directly by Owner under Section 2.7.3 of the General Conditions of the Contract or otherwise for items that are part of the scope of the Work shall be included in the Cost of Work and credited to Owner as provided in that Section.

7. Matrix Attached.

The "Method of Payment Matrix" attached hereto as Exhibit B-1 and by this reference incorporated herein contains additional allocations of categories of costs that may be incurred in connection with the Work. In the event of any ambiguity in the allocations made in Exhibit B-1, such ambiguity shall be resolved by reference to this Exhibit B and any applicable provisions of the Agreement. In the event of any conflict between Exhibit B-1 and this Exhibit B or the Agreement, the Agreement and this Exhibit B shall control unless otherwise specifically provided in this Exhibit B or in writing by the parties separate from Exhibit B-1.

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EXHIBIT B-1 – METHOD OF PAYMENT MATRIX

(See attached.)

EXHIBIT C – SCHEDULE OF EXCLUSIONS

The following items are excluded from the scope of the Work:

1. Surveys of the Site.
2. Geotechnical investigations of the Site.
3. Environmental assessments of the Site.
4. Architectural services.
5. **[List others.]**

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EXHIBIT D – SCHEDULE OF PERMITTED SELF-WORK

[None]

[Or, list.]

EXHIBIT E – ARBITRATION PROCESS

Any dispute which is identified in the Agreement as an Arbitration Dispute and which has not been resolved by agreement of Contractor and Owner (the “**Parties**”), at the request of either Owner or Contractor, the same shall be submitted to mandatory non-binding Arbitration in accordance with the provisions hereof. Except as otherwise provided herein, the Arbitration of an Arbitration Dispute shall be a precondition to any action in court with respect to such dispute, and any claims arising out of an Arbitration Dispute filed in court before the conclusion of Arbitration with respect thereto shall be stayed pending the conclusion of such Arbitration. Any Arbitration shall be non-binding, as further provided below, and shall be conducted in accordance with the following provisions and, to the extent not inconsistent with these provisions, in accordance with the Colorado Arbitration Act as in effect on the date of the Agreement (the “**Statute**”), and to the extent not inconsistent with the Statute and this Exhibit, the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time the matter is submitted to Arbitration. Unless Owner and Contractor otherwise agree in writing, no Arbitration Dispute which has not then already been submitted to Arbitration, shall be subject to Arbitration hereunder if one hundred eighty (180) days or more have passed since the Final Completion of the Project and one of the Parties has instituted litigation with respect to such Arbitration Dispute prior to the time that Arbitration of such Arbitration Dispute has been demanded in accordance herewith. Capitalized terms not otherwise defined in this Exhibit shall have the same meanings assigned to them in the Agreement.

1. **Arbitrator.** Any matter to be arbitrated hereunder shall be submitted to one Arbitrator in accordance herewith. Owner and Design-Builder shall both endeavor in good faith to agree on an Arbitrator, and in the absence of agreement within 30 days after either party delivers a written demand for Arbitration to the other, the Arbitrator shall be selected in the manner used for selection of arbitrators under the Construction Industry Rules of the American Arbitration Association then in effect; provided that resolution of disputes shall be governed by the Contract Documents and not by said Rules or under American Arbitration Association auspices.
2. **Notice of Demand for Arbitration.** In order to initiate Arbitration, the Party demanding Arbitration shall give the other Party telephonic notice of the demand and shall give written notice demanding Arbitration to such Parties. Such written notice shall identify the issues in dispute. Any time periods based on the date of notice of the demand for Arbitration shall be measured from the date such written notice is given in accordance with Article 16 of the Agreement.
3. **Time and Place for Meeting.** Promptly after the Arbitrator has been selected, the Arbitrator shall schedule a meeting (the “**Meeting**”) at the Site on the Arbitrator’s next available working day. Owner and Design-Builder shall both attend the Meeting with the Arbitrator and each Party shall be represented as it determines to be appropriate. At or before the Meeting, either Party may, at its option, submit a short written statement describing the matter in dispute and its position in regard to the same. At the Meeting, the Parties shall show the Arbitrator the parts of the Work or the drawings, or plans and specifications in dispute and, unless a hearing (“**Hearing**”) is requested by the Arbitrator or either Party pursuant to Paragraph 4 below, which may be requested at any time before the end of the Meeting, such Arbitration Dispute shall be arbitrated at the Meeting, and each Party shall make such presentation of its case at the Meeting as its shall determine. If such Arbitration Dispute is arbitrated at the Meeting, the Meeting shall continue (including from day to day if required) until all presentations permitted by the Arbitrator have been completed. Unless agreed to at the Meeting by the Arbitrator, neither Party shall be entitled to make any submission after the Meeting as to any matter arbitrated at the Meeting.
4. **Hearing.** If either Party or the Arbitrator requests a Hearing (which may be requested as to all issues to be arbitrated or as to only some of the issues to be arbitrated, in which case those issues as to which no such request has been made shall be arbitrated at the Meeting), the Arbitrator shall at the Meeting advise the Parties of the date, time, and place for the Hearing, which date shall be no sooner than the second business day after and shall not be later than the tenth business day after the date of the Meeting. The date for the Hearing shall be confirmed by

the Arbitrator by written notice to the Parties. The place of the Hearing shall be in the metropolitan area of Denver, Colorado and shall be confirmed in such written notice. In setting the Hearing, the Arbitrator shall make reasonable efforts to accommodate the schedules of the Parties but may set the Hearing without regard to scheduling problems the Parties may have if necessary to accommodate the Arbitrator's schedule and to set the Hearing within the time period fixed hereby.

5. **Procedure at Hearing.** At the Hearing, the Parties shall make arguments and present evidence. The Parties may be, but shall not be required to be, represented by counsel at the Hearing. No official stenographic or other record shall be required by the Arbitrator, but either Party may make a record for its own purposes. At the request of either Party or the Arbitrator, the portion of the Work in question shall be inspected during a visit to the site. No Party shall be entitled to make any additional submission after the Hearing has concluded unless agreed to at the Hearing by the Arbitrator. Once it begins, the Hearing shall continue, on a daily basis if necessary, until all arguments and evidence permitted by the Arbitrator have been submitted for his consideration.
6. **Arbitrator's Decision.** The Arbitrator shall deliver his Decision as to each issue arbitrated at a Meeting or Hearing to the Parties promptly and, in any event, within five (5) business days following the conclusion of the Meeting as to any Arbitration Dispute arbitrated at a Meeting and within ten (10) business days following the conclusion of the Hearing as to any Arbitration Dispute arbitrated at a Hearing. Each Decision shall be rendered in a reasoned writing explaining the basis therefor in sufficient detail for a third party to understand the factual and legal basis for the decision.
7. **Arbitrator's Fees.** The Arbitrator's fees and expenses, and any related expenses incurred by the Arbitrator (e.g., for a room for the Hearing) shall be shared equally by Design-Builder and Owner.
8. **Decision Non-Binding; Rebuttable Presumption.** No Decision rendered by the Arbitrator shall be binding; provided, however, that the written Decision of the Arbitrator shall be admissible in any litigation regarding the subject matter of the Arbitration, shall create a rebuttable presumption to the extent of the findings of fact stated in the written Decision.

EXHIBIT F – EQUAL OPPORTUNITY CONSTRUCTION CONTRACTING PROCEDURES

1 SCHOOL DISTRICT POLICY

- a) The policy of the Denver Public Schools with respect to equal opportunity contracting was established by Board of Education Resolution 2621. That policy commits the School District to the creation and preservation of equal opportunities for all people to participate in the delivery of goods and services through the contracting processes of the Denver Public Schools without regard to gender, race, ethnicity, religion, age, or disability. It is the express expectation of the Board of Education that those who contract with the School District shall in turn make available equal opportunities to the extent third parties are engaged to provide goods and services to the School District as subcontractors, vendors, or otherwise.
- b) Pursuant to resolution 2621, the contracting policies and practices of the School District are to conform to the following parameters:
- c) No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract on the grounds of gender, race, ethnicity, religion, age, or disability.
- d) Neither the gender, race, ethnicity, religion, age, nor disability of any contractor or subcontractor shall be a factor in the evaluation of any proposal or award of any contract.
- e) Any party contracting with the School District for the provision of goods or services shall be required to agree as a condition of the contract not to discriminate on any of the foregoing grounds in the performance of the contract.
- f) Information regarding contracting opportunities with the School District shall be disseminated in a manner calculated to reach all persons qualified to provide pertinent goods and services.
- g) The criteria used in evaluating contract proposals shall be based on the School District's interest in securing cost effective, quality goods and services and shall not exclude or disadvantage parties for reasons that are not closely related to those interests.
- h) In determining contract requirements care shall be taken to encourage submission of quotes or proposals from as wide a base of potential vendors as is reasonably possible.
- i) School District contracts for the provision of goods or services shall require that the contracting parties disseminate information regarding any third party contracting opportunities in a manner reasonably calculated to reach all persons qualified and willing to participate.
- j) School District contracts for the provision of goods or services shall require that the contracting party retain and make available to the School District records regarding dissemination of information regarding third party contracting opportunities, including responses received by the contracting party.

2 DISSEMINATION OF INFORMATION

- a) Pursuant to Resolution 2621 contracting opportunities and processes shall be disseminated as follows:

(1) Dissemination of Information by the School District

(a) The School District shall disseminate information regarding construction contracting opportunities by placing advertisements in a local newspaper of general circulation to all potentially interested contractors and subcontractors in the community. In addition, the School District shall make plans available for construction projects in its Construction Services Office, in the offices of the project architect, and at suitable locations within the community where those plans may be reviewed by interested contractors and subcontractors free of charge.

(2) Dissemination of Information by Contractors

(a) Each contractor shall place advertisements inviting bids or proposals on all work not to be performed by the contractor itself. At minimum, such advertisements shall be placed in a newspaper or trade journal of general circulation within the Denver metropolitan area for at least one (1) day. Such advertising may be excused only with written permission of the School District's Construction Services office, under circumstances where such advertisement would be impractical or would not reasonably further the equal opportunity contracting policy of the School District. A contractor participating in more than one project may consolidate its advertisements to save costs.

3 DATA COLLECTION AND REPORTING

a) Pursuant to Resolution 2621 the School District's Purchasing Department is responsible for collecting and maintaining information necessary to permit the School District to determine the effectiveness of School District contracting policies and practices in ensuring equal opportunity. Such information will be collected, maintained, and reported as follows:

(1) Subcontractor Bidding Phase

(a) Each Contractor shall promptly provide to the School District's Purchasing Director copies of advertisements placed pursuant to these procedures.

(b) The Contractor shall provide to the School District's Purchasing and Construction Services Director a completed Subcontractor Participation Report when the Contractor has collected the bids from which it intends to select Subcontractors. A form of this report is available from the School District. The Contractor shall provide data on all subcontractors contacted during the bid period and on each bid received from all subcontractors. Such list shall identify which, if any, of the firms on the list are, to the best of the Contractor's information, diverse businesses ("Diverse Businesses"). Diverse Business firms are defined for purposes of this procedure as businesses owned or controlled by Native Americans, Asian Americans, African Americans, Hispanics, or women. A business is deemed owned by whoever holds at least 51% of the equity interest in the enterprise. A business is deemed controlled by its chief executive officer (if the business is a corporation), its managing partner (if business is a partnership), the proprietor (if the business is a sole proprietorship), and in all cases by the person or persons with ultimate decision-making authority in the ongoing, day-to-day operation of the business.

(c) The information required by the preceding paragraph shall promptly be supplemented each time a subcontractor is replaced or an additional subcontractor is retained.

(d) To facilitate identification of Diverse Business firms, the School District shall provide to each contractor bidding on any project a list of Diverse Business firms recognized by the School District as such.

(e) The School District's Purchasing Department shall verify and compile all data received from contractors regarding Diverse Business usage and shall report such data to the Board of Education. Each report shall set forth:

(i) The identity of each Diverse Business firm

(ii) The type of work done by each Diverse Business firm

(iii) The dollar amount of the contracts with such firms

(iv) The dollar amount of Diverse Business participation on each specific project

(v) The dollar amount of Diverse Business participation on all projects in total during any reporting period

(vi) The percentage of the dollar volume of Diverse Business participation in each project

(vii) The percentage of the dollar volume of Diverse Business participation on all projects in total

b) Construction Phase

(1) The Contractor and all of his/her Subcontractors shall be responsible for maintaining the Material Suppliers Participation Report, which is a listing of all purchases of materials and/or supplies, in excess of \$200.00, used in completing the project. A sample of the Materials Suppliers Participation Report is in the Project Specifications. A computer disk with the report format will be provided to each General Contractor attending the project pre-bid conference. The report contains the following information:

(a) Type of expenditure, description of the materials or supplies purchased

(b) Date of purchase

(c) Supplier's company name

(d) Supplier's telephone number

(e) Designation of Historically Underutilized Business and type, if known

(f) Expenditure amount

(g) Remarks

(2) This report shall be maintained by transaction for the duration of the project and will be made available to the School District, upon request.

c) Project Close-Out Phase

(1) Prior to final project close-out, the Contractor shall submit the completed Material Suppliers Participation Reports prepared by his/her firm and all of their Subcontractors to the School District's Bond Program Purchasing Agent.

(2) Final payment on the contract shall not be made until all completed reports are submitted to the School District.

(3) The School District's Diverse Business Coordinator shall verify and compile all data received from contractors on the Material Suppliers Participation Report. The compiled information will be reported to the DPS Diverse Business Council and the Board of Education.

4 RECORDS RETENTION AND INSPECTION

a) Each contractor shall retain and make available to the School District and its designees records sufficient to permit the School District to ascertain compliance with the equal opportunity contracting requirements. The following records shall be maintained and made available for inspection by the School District and its designees:

(1) All records reflecting any invitations to submit bids or proposals regarding subcontracting opportunities on any School District project, including, but not limited to:

(2) Copies of advertisements placed by the contractor in any newspaper or trade journal

(3) Copies of requests for proposals or bid solicitations sent to any potential subcontractors, including names and addresses of each person or entity to whom such solicitations or proposals were sent

(4) Logs showing persons contacted by telephone or in person regarding bid opportunities

(5) All responses received to invitations to bid on subcontracting opportunities, including written responses and notes, memoranda, or other records of oral responses.

(6) All correspondence accepting, rejecting, qualifying, revising, or otherwise related to any invitation to bid subcontracting opportunities or responses thereto.

5 CONTRACT REQUIREMENTS

a) Pursuant to Resolution 2621 each School District contract with any contractor shall contain the following provisions:

b) Denver Public Schools intends that the contracting processes of the School District and its contractors provide equal opportunity without regard to gender, race, ethnicity, religion, age, or disability, and that its contractors make available equal opportunities to the extent third parties are engaged to provide goods and services to the School District as subcontractors, vendors, or otherwise. Accordingly, the contractor

shall not discriminate on any of the foregoing grounds in the performance of the contract and shall make available equal opportunities to the extent third parties are engaged to provide goods or services in connection with performance of the contract.

c) The contractor shall disseminate information regarding all subcontracting opportunities under this contract in a manner reasonably calculated to reach all qualified potential subcontractors who may be interested. The contractor shall maintain records demonstrating its compliance with this article and shall make such records available to the Owner upon the Owner's request.

d) In implementing the foregoing provisions the contractor shall comply with and be bound by the School District's equal opportunity construction contracting procedures in all respects. Such procedures are hereby incorporated by reference and are made a material part of this contract, violation of which may be deemed grounds for termination of the contract by the Owner.

6 ENFORCEMENT

a) The School District's equal employment opportunity construction contracting requirements shall be enforced under the direction of the School District's Assistant Superintendent, Administrative Services, Andre Pettigrew, who shall cause to be implemented the following steps:

(1) Compliance Review

(a) Contractor compliance with the advertising and Diverse Business identification requirements of these procedures shall be verified in each instance. In addition, contractor records shall be reviewed and the information contained in those records verified to such extent as the Chief Operating Officer deems appropriate to ensure compliance with these procedures.

(2) Complaints

(a) Any person who believes any person or firm has been subject to discrimination with respect to contracting opportunities, or that any contractor has failed to fulfill the requirements of these procedures, may file a complaint in writing with the School District's Purchasing Director, who shall cause a prompt investigation to be undertaken regarding that complaint.

(3) Reasonable Cause Notice

(a) If an audit, review, or investigation results in a determination of reasonable cause to believe that a contractor is not in compliance with these procedures, the Purchasing Director shall cause notice be given to the contractor in person or by registered mail identifying the area of noncompliance and requiring the contractor to show cause why specified sanctions should not be imposed. The notice shall advise the contractor that he may review the evidence supporting such reasonable cause determination and that he may submit a written response to such determination and request a hearing before the Chief Operating Officer regarding such determination and any sanction to be imposed. The notice shall further set forth the sanction proposed for such noncompliance.

(4) Hearing

(a) If a contractor requests a hearing regarding a reasonable cause determination, the Chief Operating Officer, or his designee shall hold a hearing at which such information and argument relevant to the determination shall be presented. The hearing shall be informal and the rules of evidence shall not be applied.

(5) Decision

(a) Following receipt of the contractor's response to the reasonable cause notice, or following a hearing, if one is requested, the Chief Operating Officer, or his designee shall issue a decision making finding with respect to the contractor's compliance or noncompliance with these procedures and imposing such sanctions, if any, as are appropriate. Such decision shall be final and binding.

(6) Contractor's Cooperation

(a) Each contractor shall cooperate with the School District in auditing, reviewing compliance, and investigating complaints. Such cooperation shall include maintaining and producing records required by these procedures and making available to the School District personnel who have such information pertinent to these procedures. No contractor shall retaliate against any person or firm, or attempt to intimidate or coerce any person or firm for registering a complaint or cooperating with an investigation related to these procedures. Nor shall any contractor knowingly provide any false or inaccurate information in connection with any audit, review, or investigation.

(7) Sanctions

(a) Sanctions to be imposed for violations of these procedures may include one or more of the following:

(i) Forfeiture of opportunities to bid on School District work for a specified time period or for specified projects

(ii) Disqualification from the School District's list of pre-qualified contractors, either permanently, or for a specified time period

(iii) Contract termination

(iv) Such other sanctions as may be deemed appropriate to effectuate the purposes of these procedures

EXHIBIT G – SCHEDULE REQUIREMENTS

- 9. Electronic Data Format.** The Project Schedule shall be developed and maintained using Primavera P6 or another electronic system approved in writing by Owner.
- 10. General Requirements.**
- 10.1 The Project Schedule shall include realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings and samples, normal weather delays for the Construction Phase and allowances for lead times in delivery of products. The Project Schedule shall provide for coordination with any separate construction activities by Owner that relate to or affect the Project (including any abatement, moving, or other occupancy requirements) and shall indicate the occupancy priority for different portions of the Site.
- 10.2 The Interim Schedule and Project Schedule shall allow at least the amount of time required by Exhibit A for Owner to review and comment on Submissions, plus time for revision of Submissions based on Owner's comments and resubmission of the same for further Owner review and comment.
- 10.3 The Project Schedule shall be divided into logical building areas by floor levels, elevations, functional spaces and additions or renovations.
- 11. Submissions.**
- 11.1 Contractor shall submit an updated Project Schedule with each Application for Payment. Each update shall include a time-scaled summary chart and a narrative report containing a description of the current status of the progress of the Work, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates, and an explanation of corrective actions taken or proposed to address any delaying factors. Such monthly submittal shall include a time-scaled Gantt chart and mathematical analysis in Portable Document Format (.pdf) and an electronic copy of the Primavera file.
- 11.2 Whenever the current update to the Project Schedule reflects a delay of five (5) or more working days behind schedule, Contractor shall submit, together with the Project Schedule update, a written statement describing the cause of the delay and the actions being taken or considered by the Contractor to recover the time lost.
- 11.3 Proposed changes to the Project Schedule shall be submitted to Owner's Project Manager for review. Submissions of the Project Schedule proposing changes shall clearly identify the activities and/or logic affected by the proposed changes and compare such changes to the most recently accepted Project Schedule.
- 12. Detail Requirements.** The Project Schedule shall, at a minimum, include the following detail and account for the following factors:
- 12.1 Activity durations in working days.
- 12.2 Long lead time procurement activities.
- 12.3 Contractor phasing activities.
- 12.4 Milestone dates for phasing requirements.

- 12.5 Owner activities (e.g. delivery of Owner-furnished items)
- 12.6 Resource constraints.
- 12.7 Interfaces with work by others (e.g. utility connections)
- 12.8 Concurrent activities by Owner's separate contractors, to the extent they may interface with or otherwise affect the Work.
- 12.9 Inspection, commissioning and testing activities.
- 12.10 Clean-up and punchlist activities.
- 12.11 Owner move-in activities.
- 12.12 Weather constraints.
- 12.13 Change Directives and Agreed Changes.
- 12.14 Early start, early finish, late start, late finish, and total float for each activity.

13. Drawing and Analysis Details.

- 13.1 The CPM logic drawings included in the Construction Schedule shall be 30" x 42" and shall, at a minimum, include:
 - 13.1.1 Activity descriptions.
 - 13.1.2 Activity durations.
 - 13.1.3 Marked critical path.
 - 13.1.4 Marked complete activities.
 - 13.1.5 Highlighted milestone dates.
 - 13.1.6 The update number and date for the logic drawing.
- 13.2 The CPM computer analysis included in the Construction Schedule shall, at a minimum, include:
 - 13.2.1 The activity designation.
 - 13.2.2 The activity description.
 - 13.2.3 The activity duration (in working days), early start, late start, early finish, and late finish dates, and total float.
 - 13.2.4 Subcontract or trade designation.

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EXHIBIT H – GENERAL CONDITIONS OF THE CONTRACT

(Attach.)

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EXHIBIT I – SUPPLEMENTARY GENERAL CONDITIONS OF THE CONTRACT

(Attach, if any.)

EXHIBIT J – FEDERAL FUNDING PROVISIONS

1. Davis-Bacon and Related Acts – Required Minimum Wage Provisions.

If the Project is financed in whole or in part from Federal funds, the following terms are included in the Agreement as required by 29 C.F.R. § 5.5(a).

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every

additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the

commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the federal agency providing funding for the work if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the federal agency providing funding for the work. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the federal agency providing funding for the work if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the federal agency providing funding for the work, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the federal agency providing funding for the work or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees —

(i) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the federal agency providing funding for the work may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

2. Contract Work Hours and Safety Standards Act – Required Provisions.

If the Guaranteed Maximum Price exceeds \$100,000.00 and the overtime provisions of the Contract Work Hours and Safety Standards Act apply to the Work, the following provisions are included in the Agreement as required by 29 C.F.R. § 5.5(b):

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The Federal agency providing funding for the work shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Exhibit J-1

Wage Determination

[Update this with the latest wage determination from wdol.gov.]

General Decision Number: CO080004 11/13/2009 CO4

Superseded General Decision Number: CO20070004

State: Colorado

Construction Type: Building

County: Denver County in Colorado.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/08/2008
1	02/15/2008
2	03/07/2008
3	04/04/2008
4	05/02/2008
5	06/06/2008
6	07/04/2008
7	08/15/2008
8	09/05/2008
9	10/03/2008
10	10/24/2008
11	11/07/2008
12	12/05/2008
13	01/02/2009
14	04/03/2009
15	05/01/2009
16	06/05/2009
17	07/03/2009
18	08/07/2009
19	08/14/2009
20	09/11/2009
21	10/16/2009
22	11/13/2009

ASBE0028-001 07/01/2009

	Rates	Fringes
Asbestos Workers/Insulator (Includes application of all insulating materials, protective coverings, coatings and finishings to all types of mechanical systems).....	\$ 23.54	11.13

BRCO0007-001 01/01/2009		
	Rates	Fringes
BRICKLAYER.....	\$ 22.95	9.07

BRCO0007-005 05/01/2009		
	Rates	Fringes
TILE SETTER.....	\$ 25.65	8.83

CARP0001-004 05/01/2009		
	Rates	Fringes
Carpenters:		
Acoustical, Drywall		
Hanging/Framing and Metal		
Stud, Form Building/Setting.	\$ 26.60	8.89

CARP2834-001 05/01/2009		
	Rates	Fringes
MILLWRIGHT.....	\$ 27.60	10.65

ELEC0068-002 06/01/2009		
	Rates	Fringes
ELECTRICIAN		
(Includes Low Voltage		
Wiring and Installation of		
Fire alarms, Security		
Systems, Telephones,		
Computers and Temperature		
Controls).....	\$ 31.00	11.40

ELEV0025-002 01/01/2009		
	Rates	Fringes
Elevator Constructor.....	\$ 35.71	18.285
FOOTNOTE:		
a. Employer contributes 8% of basic hourly rate for over 5		
years' service and 6% basic hourly rate for 6 months' to 5		
years' service as Vacation Pay Credit.		
PAID HOLIDAYS: New Year's Day; Memorial Day; Independence		
Day; Labor Day; Veterans Day; Thanksgiving Day; Friday		
after Thanksgiving Day; and Christmas Day.		

ENGI0009-003 05/01/2009		

	Rates	Fringes
Power equipment operator - crane		
141 tons and over.....	\$ 24.88	9.22
50 tons and under.....	\$ 23.82	9.22
51 to 90 tons.....	\$ 23.97	9.22
91 to 140 tons.....	\$ 24.12	9.22

* IRON0024-001 11/01/2009		
	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 24.80	9.91

LABO0720-003 05/01/2009		
	Rates	Fringes
Laborers:		
Concrete/Mason Tenders.....	\$ 16.52	6.84

PAIN0079-002 08/01/2009		
	Rates	Fringes
Drywall Finisher/Taper		
Hand.....	\$ 19.19	5.59
Tool.....	\$ 19.54	5.59
Painters:		
Brush and Roller.....	\$ 18.49	5.59
Spray.....	\$ 19.49	5.59
PAPERHANGER.....	\$ 19.19	5.59

PAIN0930-001 07/01/2009		
	Rates	Fringes
GLAZIER.....	\$ 27.95	7.10

PLAS0577-001 05/01/2007		
	Rates	Fringes
Cement Mason/Concrete Finisher...	\$ 23.80	8.25

PLUM0003-001 08/01/2009		
	Rates	Fringes
PLUMBER		
(Excluding HVAC work).....	\$ 33.37	10.45

PLUM0208-001 07/08/2009		
	Rates	Fringes

PIPEFITTER		
(Including HVAC pipe).....	\$ 33.30	10.52

SFCO0669-001 04/01/2009		
	Rates	Fringes
SPRINKLER FITTER.....	\$ 33.26	15.30

SHEE0009-001 07/01/2009		
	Rates	Fringes
Sheet metal worker		
(Includes HVAC duct and		
installation of HVAC		
systems).....	\$ 30.55	11.67

SUCO2001-011 12/20/2001		
	Rates	Fringes
Carpenters:		
All Other Work.....	\$ 16.12	2.84
Ironworkers:		
Reinforcing.....	\$ 18.49	3.87
Laborers:		
Brick Finisher/Tender.....	\$ 12.78	1.41
Common.....	\$ 10.62	2.09
Power equipment operators:		
Mechanic.....	\$ 18.48	

WELDERS - Receive rate prescribed for craft performing		
operation to which welding is incidental.		
=====		
Unlisted classifications needed for work not included within		
the scope of the classifications listed may be added after		
award only as provided in the labor standards contract clauses		
(29CFR 5.5 (a) (1) (ii)).		

In the listing above, the "SU" designation means that rates		
listed under the identifier do not reflect collectively		
bargained wage and fringe benefit rates. Other designations		
indicate unions whose rates have been determined to be		
prevailing.		

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

***School District No. 1 in the City and County of
Denver and State of Colorado***

General Conditions of the Contract

Article 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions.

- 1.1.1 **Terms Defined in Other Contract Documents.** Terms defined in the Agreement or other Contract Documents and not defined herein shall have the meanings given them in the Contract Documents where they are defined.
- 1.1.2 **Agreed Change.** Defined in Section 5.1.2 below.
- 1.1.3 **Agreement.** The Agreement to which these General Conditions of the Contract are attached.
- 1.1.4 **AHJ.** The governmental authority having jurisdiction over the Project selected by Owner for building permits, inspections and approvals.
- 1.1.5 **Application for Payment.** Defined in Section 2.2.1.
- 1.1.6 **Dispute Resolution.** An Owner administrative proceeding pursuant to the provisions of Exhibit E to the Agreement.
- 1.1.7 **Dispute.** A dispute subject to Dispute Resolution.
- 1.1.8 **Architect.** The architect, engineer, or other design consultant engaged by Owner in connection with the Project. If the Owner has not engaged such a person, references to the Architect shall be deemed to refer to the Owner unless otherwise expressly provided.
- 1.1.9 **As-Builts.** Defined in Section 2.5.1.4 below.
- 1.1.10 **Change Directive.** Defined in Section 5.1.1 below.
- 1.1.11 **Change Order.** Defined in Section 5.6 below.
- 1.1.12 **CMGC Agreement.** If these General Conditions of the Contract are used with a Construction Manager / General Contractor Agreement, that agreement.
- 1.1.13 **Colorado Labor.** "Colorado Labor" means any person who is a resident of the State of Colorado at the time of employment, selected without discrimination as to race, color, creed, sex, age, or religion, except when sex or age is a bona fide occupational qualification; provided that if C.R.S. § 8-17-101 is revised to provide a different definition of the term "Colorado Labor," such term shall have the meaning provided in C.R.S. § 8-17-101.
- 1.1.14 **Commencement of Construction.** Defined in Section 14.7 for the purposes of that Section only.

- 1.1.15 **Construction Documents.** The part of the Contract Documents comprised of the plans, specifications and other documents prepared by Architect, subject to Owner's approval, to be used in the execution of the Work.
- 1.1.16 **Construction Fee.** If the Agreement is a CMGC Agreement, the term "Construction Fee" is defined in the Agreement. Otherwise, references in these General Conditions of the Contract to the "Construction Fee" shall mean the Contractor Fee.
- 1.1.17 **Construction Work.** The portion of the Work comprised of the physical construction of the Project, including supervision and administration thereof.
- 1.1.18 **Contract.** The agreement between Owner and Contractor relating to the Project contained in the Contract Documents.
- 1.1.19 **Contract Documents.** The Contract Documents identified in the Agreement.
- 1.1.20 **Contractor.** Defined in the Agreement. Where Contract Documents refer to a "Mechanical Contractor," "Electrical Contractor," or other specific contractors, those references mean "Contractor" when the work to be performed is part of the scope of Contractor's Work.
- 1.1.21 **Contractor Fee.** If the Agreement is a CMGC Agreement, the term "Contractor Fee" is defined in the Agreement. Otherwise, the term "Contractor Fee" shall mean the part of the Contract Sum allocated in the Schedule of Values to Contractor's profit, administrative and overhead expenses.
- 1.1.22 **Contract Sum.** Defined in the Agreement. If the Agreement is a CMGC Agreement, then adjustments in the Contract Sum to be made under these General Conditions of the Contract shall be applied to the Guaranteed Maximum Price, and prohibitions on adjustments to the Contract Sum contained in these General Conditions of the Contract shall be construed as prohibitions on adjustments to the Guaranteed Maximum Price.
- 1.1.23 **Cost of Work.** The sum of Direct Hard Costs, Soft Costs, and (if the Agreement provides for one) the General Conditions Fee, unless a different definition is provided in the Agreement.
- 1.1.24 **CPM.** The Critical Path Method of construction scheduling, as described in *CPM in Construction – A Manual for General Contractors*, published by The Associated General Contractors of America, Inc.
- 1.1.25 **Current Laws.** The applicable laws and regulations in effect from time to time on and after the date of this Agreement, including building codes, dimensional aspects of zoning regulations, safety regulations, environmental laws, and other laws and regulations applicable to the Project, as the same have been officially interpreted by published decisions of courts, published regulations, and other official published interpretations which have the force of law.
- 1.1.26 **Direct Hard Costs.** The costs of labor and materials for the physical construction of the improvements comprising the Work, including any site and infrastructure work, overlot grading, asphalt paving of parking areas and entry drive, surfacing of entries and loading dock, curb and gutter, sidewalks, site lighting, water and sanitary sewer piping and manholes, telephone conduit, landscaping, irrigation systems, storm sewers, retaining and detention ponds, site amenities, and fiber-optic conduit, manholes, electricity service lines, excavation and placement of foundation systems, concrete slab-on-grade,

structural frame and facades, window systems, roof-top mechanical enclosures, mechanical, plumbing and electrical systems, interior framing and finishes, and other similar elements.

- 1.1.27 **Employee Benefits.** Defined in Section 22.2.
- 1.1.28 **Event of Default.** Defined in Section 14.1.
- 1.1.29 **Excused Delay.** Defined in Section 3.4.
- 1.1.30 **Final Completion.** Defined in Section 3.3. “Finally Complete” and “Finally Completed” shall have the correlative meanings.
- 1.1.31 **Final Payment.** Defined in Section 2.5.1.
- 1.1.32 **Force Majeure Delay.** Defined in Section 3.4.3.1.
- 1.1.33 **General Conditions Fee.** May be defined in the Agreement.
- 1.1.34 **General Conditions of the Contract.** These General Conditions of the Contract, including without limitation any and all Supplementary General Conditions of the Contract and Addenda to General Conditions of the Contract.
- 1.1.35 **Hazardous Substances.** Defined in Section 16.1.
- 1.1.36 **Interim Schedule.** Defined in Section 4.2.1.
- 1.1.37 **Lost Weather Day.** Defined in Section 3.4.2.2.
- 1.1.38 **Milestone Schedule.** The schedule for the design and construction (if construction is contemplated) of the Project set forth in Exhibit A to the Agreement.
- 1.1.39 **Ordinary Course Materials.** Defined in Section 16.5.
- 1.1.40 **Owner.** School District No. 1 in the City and County of Denver and State of Colorado.
- 1.1.41 **Owner Delay.** Defined in Section 3.4.1.
- 1.1.42 **Owner Parties.** Owner, its directors, officers, agents and employees, the members of its Board of Education, and such other parties as may be designated as Owner Parties in Exhibit A to the Agreement.
- 1.1.43 **Owner’s Project Manager.** The individual employee or agent of Owner designated by Owner from time to time as Owner’s primary representative in connection with the Project.
- 1.1.44 **Owner’s Website.** Owner’s Internet World Wide Web page at <http://fm.dpsk12.org/> and its subsidiary pages.
- 1.1.45 **Progress Payment.** Defined in Section 2.2.
- 1.1.46 **Project Schedule.** Defined in Section 4.2.2.

- 1.1.47 **Proposed Change.** Defined in Section 5.2.1 below.
- 1.1.48 **Punch List.** A punch list prepared by Contractor, Architect and Owner at the time of Substantial Completion, further described in Section 3.2 below, listing items of Work to be completed in order to bring the Work to Final Completion.
- 1.1.49 **Required Substantial Completion Date.** The date specified as the Required Substantial Completion Date in the Milestone Schedule.
- 1.1.50 **Required Final Completion Date.** The date specified as the Required Final Completion Date in the Milestone Schedule.
- 1.1.51 **Retainage.** Defined in Section 2.2.2.
- 1.1.52 **Schedule of Values.** Defined in Section 2.1.
- 1.1.53 **Site.** The property of Owner where the Project is to be constructed (or a portion of such property reasonably designated by Owner), whether one or more parcels.
- 1.1.54 **Soft Costs.** Amounts payable by Contractor to third parties for development approvals and building permits, costs of insurance and bonds (unless Exhibit B-1 to the Agreement allocates such costs to a different category), consulting fees, and other fees, taxes, and assessments related to the Work and payable to governmental authorities for which Contractor is liable
- 1.1.55 **Standards.** Denver Public Schools Design and Construction Standards, a copy of which is available on Owner's Website.
- 1.1.56 **Subcontractor.** Any contractor who has contracted directly with Contractor for the performance of part of the Work.
- 1.1.57 **Substantial Completion.** Defined in Section 3.2. "Substantially Complete" and "Substantially Completed" shall have the correlative meanings.
- 1.1.58 **Sub-subcontractor.** Any contractor who has not contracted directly with Contractor but has contracted directly with or indirectly with a Subcontractor for the performance of part of the Work.
- 1.1.59 **Supplier.** Any materialman, or supplier of materials or equipment who has contracted directly or indirectly with Contractor to provide materials and supplies for the Work.
- 1.1.60 **Warranty Period.** Defined in Section 11.1.
- 1.1.61 **Weather Delay.** Defined in Section 3.4.2.
- 1.1.62 **Work.** All construction, construction management, supervision, coordination and other tasks contemplated by or reasonably inferable from the Contract Documents. If the Agreement is a CMGC Agreement, the term "Work" also includes the Pre-Construction Work.
- 1.1.63 **Work Product.** All documents, materials, and things, including plans and other drawings, specifications, reports, assessments and models, created or prepared by Architect or Contractor.

1.2 Interpretation.

- 1.2.1 “Including” shall, unless otherwise specifically stated, mean including, but not limited to.
- 1.2.2 Words such as “hereby,” “herein,” and “hereunder” and words of similar import shall be construed to refer to the Agreement in its entirety and the General Conditions of the Contract, subject to the provisions of the Agreement relating to resolution of differences between terms of different Contract Documents.
- 1.2.3 Where otherwise consistent with the context, the singular shall include the plural and the plural shall include the singular.
- 1.2.4 The titles of articles and sections used in the Agreement and these General Conditions of the Contract are primarily for the convenience of the reader but may be used as aids in interpreting any provision herein. If any of the provisions of the exhibits attached to the Agreement hereto or of any of the Contract Documents are inconsistent with the provisions of the Agreement, the provisions of the Agreement shall control.
- 1.2.5 Any references to “days” in any Contract Documents refer to calendar days. Any references in any Contract Documents or any communications between Owner and Contractor to “business days” refer to days when Owner’s administrative offices are open for the regular conduct of business. Any such references to the “school year” refer to the period from August to late May or early June when Owner’s school facilities are in regular session, as determined by the official calendar of Denver Public Schools. Any such references to “summer” refer to the period between the end of one school year in late May or early June and the commencement of the next school year in August.
- 1.2.6 Wherever the Contract Documents contain the words “as directed,” “as required,” “as ordered,” “as designated,” “as indicated,” “as prescribed,” or other words or phrases of like import to refer to elements of the Work, the same shall be construed to refer to the direction, requirement, order, designation, indication, prescription, or other approval of the Architect and Owner, unless otherwise expressly stated. When the words “as approved,” “as accepted” (or “acceptable”), “satisfactory,” or other words or phrases of like import are used to refer to elements of the Work, they shall mean approved or accepted by, or acceptable to, or satisfactory to the Architect and Owner, unless otherwise expressly stated.

Article 2. PAYMENTS

- 2.1 **Schedule of Values.** Before beginning Construction Work or at such earlier time as may be required by the Agreement, Contractor shall submit a schedule showing the breakdown of the total cost of the Project into itemized categories for the various parts of the Work, separating material costs, labor costs, general conditions costs and other costs, including as material costs the material costs of all Subcontractors and the costs of all materials to be taken from the Contractor’s or any Subcontractor’s own stocks of material, all in form acceptable to the Owner, and supported by such evidence as the Architect or Owner may request. Such schedule shall be subject to approval by Owner, which approval shall not unreasonably be withheld. If Owner does not approve such schedule, it shall specify the portions thereof that it does not approve and give reasons why Owner is withholding approval, and Contractor shall revise the schedule. Such schedule, or any revision thereof, when approved by Owner is called the “**Schedule of Values.**”
- 2.2 **Progress Payments.** Owner shall make monthly payments (each a “**Progress Payment**”) on account of the Contract as follows:

2.2.1 **Application for Payment.**

2.2.1.1 Before Work commences, Owner shall designate a day of the month by which Applications for Payment shall be due. On or before such day of each month after the Construction Work has commenced (but not earlier than the first day of such month), Contractor shall submit to Owner and Architect an “**Application for Payment**” substantially in the form of the current AIA Documents G702 and G703 (the Application and Certificate for Payment and the Continuation Sheet) based on the Schedule of Values, and such other materials and information as may be required by the Agreement. No Application for Payment except the Application for Final Payment shall be made for an amount less than \$1,000.00.

2.2.1.2 Each Application for Payment shall constitute a representation and warranty of Contractor (whether or not specifically stated) that Contractor is not in default hereunder, the amounts requested in the Application for Payment are due hereunder, after payment of the amounts requested in the Application for Payment, the amount remaining to be paid under the Contract is sufficient to pay for the balance of the Work, the Work performed to date is in accordance with that contemplated by the Milestone Schedule (or specifying the portions thereof that are not), Contractor has no claims hereunder and has no request for changes in the Milestone Schedule or the Contract Sum not provided for in the Application for Payment. Each Application for Payment shall further constitute the representation and warranty of Contractor (whether or not specifically stated) that the percentage of the Work represented to have been done in each category provided on the Schedule of Values has, in fact, been completed as of the last day of the period for which such Application for Payment has been submitted. The period covered by an Application for Payment shall end not earlier than ten (10) days before the due date for the Application for Payment, unless Contractor and Owner agree otherwise in writing.

2.2.1.3 Each Application for Payment shall set forth the status of all Proposed Changes, Change Directives, and Change Orders.

2.2.1.4 Contractor shall promptly submit such additional information and documents as Owner or Architect may reasonably request in support of the Application for Payment.

2.2.2 **Retainage.** Until the Work has been completed and all conditions to Final Payment have been satisfied, Owner shall be entitled to retain from each Progress Payment five percent (5%) of the amount that would otherwise be due to the Contractor (the “**Retainage**”).

2.2.3 **Warranty of Title to Work Completed.** Contractor warrants and guarantees that title to all work, materials, and equipment covered by an Application for Payment, whether incorporated in the Work or not, will pass to Owner upon the receipt of such payment by Contractor, free and clear of all liens, claims, security interests, or other encumbrances, including all claims of Subcontractors, Suppliers, and any others providing work or materials for the Project, or who might be entitled to make a claim based thereon. No work, materials, or equipment covered by an Application for Payment shall have been acquired subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Contractor or by other persons who perform any work at the Site or furnish any materials or equipment for the Work. Although title to all components and aspects of the Work which are in place and title to all materials on account of which any payment has been made to Contractor shall be granted to Owner in accordance with this Section, Contractor shall continue to provide for

adequate protection of all Work until Substantial Completion. Contractor shall make good any damage, injury, or loss to Work prior to Substantial Completion except to the extent such damage, injury, or loss is caused by Owner, its contractors, suppliers, agents, licensees, guests, or invitees.

2.2.4 Payment of Subcontractors and Suppliers. Contractor shall promptly pay all amounts due to Subcontractors, Suppliers, and any others engaged by Contractor for the Work. Whether or not expressly stated, each Application for Payment to Owner will constitute a warranty and representation from Contractor to Owner that all Work previously paid for by Owner is free and clear of all liens, encumbrances and claims and that all Subcontractors, Suppliers, and others engaged by Contractor for such Work have been paid all amounts due to them on account of payments previously made by Owner to Contractor. Owner may, at its option, pay Subcontractors, Suppliers and other vendors directly or by checks issued to Contractor and such persons jointly.

2.2.5 Payments for Pre-Requisitioned Materials. The costs of materials purchased and stored in accordance with all applicable provisions of the Contract Documents but not yet installed may be included in the applicable category of costs for an Application for Payment when stored, provided that such costs shall not be included again when the materials are installed, and Owner shall be entitled to a credit for the value of any such materials not actually incorporated in the Work. Payments to be made on account of such materials shall be conditioned upon submission of bills of sale or such other documents or procedures satisfactory to Owner to establish Owner's unencumbered title to such materials or equipment or otherwise to protect Owner's interest.

2.2.6 Right to Audit; Non-Waiver. Payment of any Progress Payment by Owner shall not foreclose the right of Owner to examine the books and records of Contractor applicable to the Contract to determine the correctness and accuracy of any item and shall not constitute an acceptance by Owner of the Work covered thereby or a waiver of any claim or right which Owner may have with regard to such Work or the Application for Payment.

2.2.7 Certificate for Payment.

2.2.7.1 The Architect shall, within ten (10) days after receipt of the Contractor's Application for Payment, either certify the same to Owner for payment (with a copy to the Contractor) or notify Contractor and Owner of the reasons for withholding certification, which the Architect may withhold in whole or in part if it determines in its professional judgment that it cannot make the representations required by this Section 2.2.7 with respect thereto or for other good cause (including any of the causes listed in Section 2.4 below except Section 2.4.1).

2.2.7.2 The issuance of a certificate for payment shall constitute a representation by the Architect to the Owner, to the best of the Architect's knowledge, information and belief based on the observation of the Work required by the Architect's agreement with the Owner, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents, subject to minor deviations to be corrected prior to completion and specific qualifications the Architect may set forth in its certificate. The issuance of such a certificate shall not be construed as a representation that the Architect has evaluated construction means, methods, techniques, sequences or procedures. Such a certificate for payment shall not be construed as a determination binding upon Owner of any of the matters described in this Section 2.2.7.2.

- 2.3 Time for Progress Payment.** Subject to the provisions of Section 2.4 below, Owner shall make Progress Payments based on Applications for Payment within thirty (30) days after the date each application is properly submitted; provided, however, that if an Application for Payment is submitted after the day of the month it is due, payment thereon shall be made within thirty (30) days after the due date of the next Application for Payment.
- 2.4 Owner's Ability to Withhold Payment.** Architect may decline to approve, or Owner may decline to make payment of, any portion of a Progress Payment that is not then payable in accordance herewith and may decline to make payment of any other portion of a Progress Payment which is reasonably necessary to protect Owner from any loss because of any of the following:
- 2.4.1 Architect's withholding of certification of the Progress Payment or the applicable portion thereof.
 - 2.4.2 Defective portions of the Work not corrected (for which an Application for Payment has been submitted).
 - 2.4.3 Damage by Contractor to property not included in the Work.
 - 2.4.4 Failure of Contractor to obtain necessary permits or licenses or to comply with Current Laws.
 - 2.4.5 Failure to submit required progress reports.
 - 2.4.6 Failure to keep a superintendent on the Site during Construction Work.
 - 2.4.7 Failure of Contractor to make payments properly to Subcontractors, Suppliers, and others for labor, materials, or equipment, the filing of claims for payment with respect to part of the Work, or a reasonable likelihood exists that a claim will be made.
 - 2.4.8 A reasonable likelihood exists that the Work cannot be completed for the unpaid balance of the Contract Sum.
 - 2.4.9 The Work cannot be Substantially Completed by the Required Substantial Completion Date, as extended, if applicable, pursuant to the terms of the Contract Documents, and the unpaid balance would not be adequate to cover the sum of (i) the unpaid balance of the Contract Sum plus (ii) liquidated damages or other damages for the anticipated delay.
 - 2.4.10 Failure of Contractor to carry out the Work in accordance with the Contract Documents.
 - 2.4.11 The Work has not reached the stage of completion claimed in the Application for Payment or, for any other reason, payment is not then due hereunder.
 - 2.4.12 Claims filed in connection with the Work or reasonable evidence indicating probable filing of claims.
 - 2.4.13 Amounts due and unpaid from Contractor to Owner under the Contract or any other agreement.
 - 2.4.14 Any other cause that reasonably justifies withholding payment either (i) to assure the full and timely performance by Contractor hereunder or (ii) to protect Owner from loss or damage hereunder.

- 2.4.15 If Owner withholds any portion of a Progress Payment, it shall be obligated to pay the undisputed balance of the Progress Payment, as set forth in the Application for Payment, less the amount reasonably estimated by Owner as necessary to protect Owner from the losses enumerated under this Section 2.4. No such withholding in good faith shall constitute an Event of Default by Owner or entitle Contractor to stop the Work.

2.5 Payment upon Final Completion.

- 2.5.1 Full payment of the Contract Sum, including all Retainage previously withheld (the “**Final Payment**”), shall be due and payable within sixty (60) days after (i) Final Completion has been achieved and the Contract has otherwise been fully performed by Contractor except for Contractor’s responsibility to correct defective or nonconforming Work not yet discovered as provided in Article 11, and to satisfy other requirements, if any, which necessarily survive Final Payment; (ii) Contractor has submitted to Owner and Architect Contractor’s Application for Final Payment; (iii) if required by the Agreement, a final accounting for the Cost of Work has been submitted by Contractor and reviewed by Owner and its consultants; (iv) any adjustments in the Final Payment required by such an accounting have been made; (v) Contractor has given Owner written notice that all of the documents and materials required by this Section 2.5.1 have all been delivered; and (vi) all of the following items have been provided to Owner and Architect or otherwise satisfied:
- 2.5.1.1 Contractor’s affidavit that all payrolls and bills for materials, equipment, and other indebtedness connected with the Work for which Owner has paid Contractor prior to the time of the Application for Payment have been paid or otherwise satisfied.
- 2.5.1.2 Consent of surety to Final Payment.
- 2.5.1.3 Reasonable evidence in the form of a “contractor certification” of material compliance with all requirements of the Contract Documents, together with (A) the operation and maintenance manuals required by Section 4.10; (B) keys for any newly keyed doors with a keying schedule (master, sub-master, and special keys); (C) certificates of all tests and inspections; (D) all existing printed or typewritten operating, servicing, maintenance, and cleaning instructions for all Work, including parts lists and special tools for mechanical and electrical Work; and (E) any similar materials reasonably requested by Owner.
- 2.5.1.4 A complete set of redline Construction Documents, including all plans and specifications, depicting and describing the condition of the Work as constructed (“**As-Builts**”), sufficient in the Architect’s judgment for the Architect to prepare final and complete as-built drawings and specifications for the Work.
- 2.5.1.5 A certificate (or, at Owner’s option, endorsements) evidencing that insurance required by the Contract Documents to remain in force, if any, is currently in effect and will not be canceled or allowed to expire without at least thirty (30) days prior notice to Owner.
- 2.5.1.6 A written statement that Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents.
- 2.5.1.7 Acceptance of the Final Payment by Contractor shall constitute a waiver of claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of Application for Final Payment and except

for any disputed amounts that are pending any final cost accounting process required by the Agreement.

2.5.1.8 If, after Substantial Completion, the Final Completion of the Work is prevented through delay in the correction and completion of items on the Punch List by causes beyond the control of the Contractor, the Owner may, in its sole discretion, pay Contractor any of the amounts that would otherwise be due in Final Payment except that Owner shall retain an amount equal to three hundred percent (300%) of the cost of completing and correcting such incomplete or unacceptable Work, as reasonably estimated by Owner.

2.6 Final Settlement – Subcontractor and Supplier Claims

- 2.6.1 Before Final Payment is made, Owner will advertise the final settlement of the Contract by two (2) publications of notice thereof pursuant to C.R.S. § 38-26-107, the last of which shall be published not less than ten (10) days before the date set for final settlement. If any unpaid claim for labor, materials, rental machinery, tools, equipment, sustenance, or other supplies used or consumed in connection with the Work is filed, Owner shall withhold from the Final Payment amounts sufficient, in Owner's reasonable determination, to insure the payment of such claim until such claim shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing with the Owner a receipt in full or an order for withdrawal signed by the claimant or his duly authorized agent or assignee.
- 2.6.2 Notwithstanding the foregoing paragraph, funds retained for the payment of claims filed with the Owner shall not be withheld longer than ninety (90) days following the date fixed for final settlement as published unless an action is commenced within that time to enforce such unpaid claim and a notice of lis pendens is filed with the Owner.
- 2.6.3 At the expiration of the ninety-day period, Owner shall pay to the Contractor such amounts as are not the subject of suit and lis pendens notices and shall retain thereafter, subject to the final outcome of such suits, only sufficient funds to insure the payment of judgments that may result from the suit.
- 2.6.4 If any claim for such labor, materials, supplies or equipment remains unsatisfied after Final Payment, Contractor shall refund to Owner all sums which the Owner may for any reason be obligated to pay to satisfy such claim, including all costs and attorneys' fees incurred by Owner in connection therewith.

2.7 Appropriations.

- 2.7.1 If the Agreement is a CMGC Agreement, Owner states in accordance with C.R.S. § 24-91-103.6 that the amount of money appropriated by the Owner's Board of Education for the Work is equal to or in excess of the Guaranteed Maximum Price as it is established upon the execution of the Agreement, or, if no Guaranteed Maximum Price is established upon the execution of the Agreement, the Pre-Construction Fee.
- 2.7.2 If the Agreement is not a CMGC Agreement, Owner states in accordance with C.R.S. § 24-91-103.6 that the amount of money appropriated by the Owner's Board of Education for the Work is equal to or in excess of the Contract Sum.
- 2.7.3 No Change Order or other form of order or directive by Owner requiring additional compensable Work to be performed (including, if the Agreement is a CMGC Agreement, any approval of a First Cost Estimate or Second Cost Estimate that would newly

establish or increase the Guaranteed Maximum Price) shall be effective which causes the amount of compensation to exceed the amount appropriated for the Contract, unless (i) the Contractor is given written assurance by Owner that lawful appropriations to cover the costs of the additional Work have been made or (ii) the Work is performed pursuant to a clause that permits additional compensation in the event of a specific contingency or event.

- 2.7.4 Except to the extent specifically provided to the contrary by Current Laws, Owner's obligation for payments under the Contract shall extend only to money appropriated for that purpose as required of school districts by law.

2.8 Taxes; Direct Purchase Option.

- 2.8.1 Contractor shall only include sales and use tax levied by the City and County of Denver on materials from its Schedules of Values, and Subcontractors and Suppliers shall only include such amounts in their bids. Except as provided in Section 2.8.2 below, the Owner will furnish to Contractor, on request by the Contractor, the necessary exemption certificates to aid the Contractor in the recovery or avoidance of any such taxes paid or otherwise due to be paid by Contractor for materials and equipment built into the Project, or to support the Contractor's failure to pay such taxes, as the case may be.
- 2.8.2 Contractor and its Subcontractors shall be responsible to obtain from the Colorado State Department of Revenue certificates for exemption indicating that the purchase of construction building materials for the Work is for a purpose stated in Colorado Revised Statutes Section 39-26-114(1)(a)(XIX).
- 2.8.3 At Owner's option, Contractor and Owner shall cooperate with one another so that Owner may purchase or contract directly for such items or Contractor and Owner shall make other appropriate arrangements as necessary to avoid incurring taxes, fees, and other costs. In such circumstances, Contractor shall act as agent for Owner in effecting such purchasing and contracting, Contractor shall have all the responsibilities as to such portions of the Work as Contractor otherwise has with respect to the Work. Contractor shall be responsible to expedite, arrange for and receive delivery of all such purchases, regardless of whether made by Contractor or Owner, and shall promptly examine deliveries to ascertain whether or not they comply with the requirements of the Contract Documents. Contractor shall promptly notify the Owner and Architect of any delay in the delivery of such purchases, any failure to receive such purchases as needed and any failure of such purchases to comply with the Contract Documents
- 2.8.4 To the extent that Owner makes any payments directly to Suppliers, such payments shall be credited against the payments due from Owner to Contractor hereunder and shown, as incurred, on all Applications for Payment. Owner shall promptly notify Contractor and Architect, on serially numbered forms, of any amount paid directly for materials, any discounts obtained by Owner, and the amount of the credit due to Owner.
- 2.8.5 Contractor shall pay all sales, consumer, use, and other similar taxes required by law, all as part of the Contract Sum, except to the extent of the exemptions that may be available to Contractor or Owner as provided above. Contractor shall be entitled to an adjustment (increase) in the Contract Sum to the extent that an increase in the aggregate amount of such taxes payable by Contractor hereunder results from any change in Current Laws creating such taxes or increasing the rate of such taxes enacted after the date of the Agreement.

- 2.9 Discounts.** All discounts for prompt payment obtained by Contractor shall accrue to Owner to the extent they apply to Costs of Work payable by Owner (whether paid directly or reimbursed to Contractor). To the extent that such discounts apply to costs paid by Contractor without reimbursement, such discounts shall accrue to Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus or salvage materials and equipment, shall accrue to the benefit of Owner, and the Contractor's agreements with others shall provide for such credits to be applied either through credits from Subcontractors and Suppliers passed through to Owner by Contractor or by payment directly to Owner.
- 2.10 Adjustments.** The Contract Sum (or, if the Agreement is a CMGC Agreement, the Guaranteed Maximum Price) may be adjusted by Agreed Change. Contractor is obligated to pay out of its own funds any overruns of the Contract Sum (or, if the Agreement is a CMGC Agreement, the Guaranteed Maximum Price) not approved by Agreed Change as provided in Section 5.1.2.

Article 3. COMPLETION, TIME, AND DELAYS IN CONSTRUCTION

- 3.1 Time of the Essence.** The Work shall be performed in accordance with the Milestone Schedule and other schedules approved by Owner under the Contract, subject to Excused Delay and adjustment in accordance with the terms of the Agreement and these General Conditions of the Contract.
- 3.2 Substantial Completion.** "Substantial Completion" shall have been achieved when the Work is sufficiently complete in accordance with the Contract Documents so (i) Owner can occupy and utilize the Site for its intended use, (ii) a temporary or permanent certificate of occupancy for the Project (or, if the AHJ does not issue certificates of occupancy for projects like the Project and a certificate of occupancy is not necessary for Owner's use of the Project for its intended purpose, a certificate of compliance) and all other governmental permits for the occupancy and use of all of the Project have been issued, (iii) all systems to be constructed or installed by Contractor are fully functional, (iv) Contractor has delivered the As-Built, and (v) the Work is complete except for minor items set forth on the Punch List which are not required to be completed for Owner to occupy and use the Building for its intended purpose, which can reasonably be completed within thirty (30) days, and the completion of which while Owner and its licensees occupy the Site will not interfere with such use and occupancy of the Site (including applicable parking and recreational facilities) for their intended purpose and will not delay or render more expensive in any material way the completion and correction of the Punch List items. Contractor acknowledges that the standard for Substantial Completion of an educational facility is significantly more stringent than the standard customary in the construction industry generally because of the intensive uses to which educational facilities are put. Contractor shall construct the Work and achieve Substantial Completion of all Work on or before the Required Substantial Completion Date.
- 3.3 Final Completion.** "Final Completion" shall have been achieved when (i) all of the Work has been finally completed in accordance with the Contract Documents and all final certificates of occupancy required by Current Laws have been issued, (ii) the walk-through inspection of the Work confirms completion of the Punch List items, and (iii) any other matters required to be completed to finish the Work and render the Project fully complete and ready for use and occupancy shall have been completed. When Contractor has completed the Punch List items for the Work, Contractor shall request a walk-through inspection to confirm the completion of those items, which Owner and Contractor shall schedule at a mutually convenient time, but in no event later than five (5) business days after Contractor notifies Owner of its completion of the Punch List for such portion of the Work. Contractor shall achieve Final Completion of all Work on or before the Required Final Completion Date.

3.4 Excused Delay. If Contractor is delayed at any time in the progress of the Work or the Required Substantial Completion Date is delayed due to the following causes (“**Excused Delay**”), the Required Substantial Completion Date and Required Final Completion Date shall be extended by a period of time equal to the number of days of Excused Delay (provided that, for any day on which two or more Excused Delays overlap, Contractor shall be allowed only one day of Excused Delay):

3.4.1 Owner Delay.

3.4.1.1 An “**Owner Delay**” shall be a delay caused (i) by the act or neglect of Owner, (ii) (if the Agreement is a CMGC Agreement) by the failure of Owner during the Design Phases to approve or submit comments on any Submission or other plans in the time required by the Project Schedule approved by Owner, or (iii) by the failure of Owner to execute any documents necessary for the performance of the Work, including the granting of easements across the Site or the disbursal of necessary funds to Contractor for payments of amounts due to Contractor hereunder (not including amounts being disputed); but only to the extent that the act giving rise to the claimed Owner Delay actually delays progress on the critical path to completion of the Work.

3.4.1.2 In order to claim that an Owner Delay has occurred, Contractor shall be required to notify Owner of the claimed Owner Delay promptly, and in any event before the end of the second (2nd) business day, after the start of the claimed Owner Delay. Any such notice shall specify the occurrence of the claimed Owner Delay, the nature of the cause of the claimed Owner Delay, and the Work that is affected by the claimed Owner Delay. An Owner Delay shall be deemed to have commenced on the day that it begins if such notice is timely given, or, if such notice is not timely given, shall be deemed to have commenced on the first business day after such notice is given.

3.4.2 Weather Delay.

3.4.2.1 In order for a weather delay (a “**Weather Delay**”) to occur, the Lost Weather Days in any calendar month must exceed the normal number of such days for such month set forth below. The Weather Delay, if any, shall be the number of days of such excess; provided that no Weather Delay shall have occurred except to the extent that Work which needs to be performed during the period of time affected by adverse weather is actually delayed in a manner that delays the critical path to completion of the Work. To the extent that the number of Lost Weather Days in any month is smaller than the normal number of Lost Weather Days in such month set forth below, the difference shall be carried forward to the following month (and, to the extent not then consumed, the ensuing months) and used to offset any Lost Weather Days in such following month or months. Contractor and Owner agree that the normal number of such delays for each month is as follows:

January:	6 days
February:	6 days
March:	5 days
April:	5 days
May:	5 days
June:	4 days
July:	4 days
August:	4 days

September: 3 day
October: 4 days
November: 5 days
December: 6 days

3.4.2.2 As used herein, a **“Lost Weather Day”** shall mean a day during which actual adverse weather prevents work on activities that need to be performed on that day in accordance with the Project Schedule for fifty percent (50%) or more of Contractor’s scheduled Work for such day.

3.4.2.3 Contractor shall report, by facsimile notice, to Owner (i) no later than 10:30 a.m. (in the time zone in which the Site is located) on each day Contractor claims to be a Lost Weather Day or (ii) if Work on the Project has commenced for such day, within one hour of Contractor’s decision to suspend Work because of such adverse weather. Such report shall state that Contractor considers that a Lost Weather Day is occurring and shall describe the weather conditions experienced and how the weather conditions have affected the Scheduled Work for such day. Unless Contractor gives such timely notice as to any day when work is adversely affected by adverse weather, Contractor shall not be entitled to claim such day is a Lost Weather Day.

3.4.3 **Force Majeure Delays.**

3.4.3.1 A **“Force Majeure Delay”** shall be a delay which could not reasonably have been anticipated or avoided by Contractor and which is caused by labor disputes (which are not limited in effect to Contractor or the Subcontractor, Sub-Subcontractor, or Supplier but are generally applicable to contractors at least in the area where the portion of the Work affected is being performed); fire; flood; earthquake; riot; war; insurrection; unusual delay in transportation (which is generally applicable in the area where the portion of the Work affected is being performed); fuel, material, or labor shortages (which are generally applicable in the area where the portion of the Work affected is being performed); unavailability, action, or inaction of public authorities (including delay of governmental approvals in excess of that normally to be expected, as shown on the Milestone Schedule) not arising out of the fault of Contractor; or unavoidable casualties; provided that delays caused by adverse weather conditions shall not be Force Majeure Delays. No Force Majeure Delay shall have occurred, however, except to the extent that the critical path to completion of the Work is actually delayed.

3.4.3.2 In order to claim that a Force Majeure Delay has occurred, Contractor shall be required to notify Owner promptly, and in any event within two (2) business days, after the claimed Force Majeure Delay becomes known to Contractor. Any such notice shall specify the occurrence of the claimed Force Majeure Delay, the nature of the cause of the claimed Force Majeure Delay, the Work that is affected by the claimed Force Majeure Delay, and whether such Force Majeure Delay has ended (in which case the date on which it ended shall be stated) or is then continuing. A Force Majeure Delay shall be deemed to have commenced on the day that it begins if such notice is timely given, or, if such notice is not timely given, shall be deemed to have commenced on the day after such notice is given.

3.4.4 Any dispute as to whether an Excused Delay has occurred shall be a Dispute and shall, at the request of either Contractor or Owner, be submitted to Dispute Resolution.

3.5 Guarantee of Required Substantial Completion Date and Required Final Completion Date.

- 3.5.1 Time is of the essence in the Contract with respect to the Required Substantial Completion Date and Required Final Completion Date. As a remedy for Contractor's failure to meet the Required Substantial Completion Date and Required Final Completion Date (as each may be extended by the terms of the Contract Documents), Contractor shall be liable for liquidated damages for each day after the Required Substantial Completion Date until the Work is Substantially Complete and each day after the Required Final Completion Date until the Work is Finally Complete.
- 3.5.2 Should Contractor fail to Substantially Complete the Work by the Required Substantial Completion Date, Contractor shall pay to Owner as liquidated damages the amounts set forth on Exhibit A to the Agreement for each day after the Required Substantial Completion Date until the Work is Substantially Complete. Should Contractor fail to Finally Complete the Work by the Required Final Completion Date, Contractor shall pay to Owner as liquidated damages, in addition to any liquidated damages that may be due under the foregoing sentence, the amounts set forth on Exhibit A to the Agreement for each day after the Required Final Completion Date until the Work is Finally Complete.
- 3.5.3 Contractor shall pay such liquidated damages (without offset or deduction for any amounts Contractor claims Owner then owes or otherwise) by certified or cashier's check or by wire transfer of immediately available funds to a bank account designated by Owner within thirty (30) days of receipt of invoice from Owner for same, which Owner may issue from time to time until Substantial Completion and/or Final Completion, as applicable, has occurred. Any such amounts not paid on or before thirty (30) days after receipt of invoice shall accrue interest at the default rate of fifteen percent (15%) per annum from the date due until and including the date paid. In the alternative, Owner shall have the right to offset any such amounts owed to Owner as liquidated damages in whole or in part against amounts due to Contractor under the Contract.
- 3.5.4 Owner's right to liquidated damages pursuant to this Section 3.5 shall be in lieu of any other damages Owner may be entitled to collect as a result of Contractor's delay in achieving Substantial Completion of the Work on or before the Required Substantial Completion Date or in achieving Final Completion of the Work on or before the Required Final Completion Date, as applicable; provided that (i) such liquidated damages shall not be in lieu of or prevent Owner from exercising any other right or remedy for delay (other than collection of damages), such as, by way of example and not by way of limitation, remedies to terminate the Contract or to take over the Work, (ii) such liquidated damages are only for the failure of Contractor to achieve the required degree of completion of the Work by the applicable date and are not in lieu of any right or remedy that Owner has for any other breach, default, or failure to perform under the Contract (for example, and not by way of limitation, defective work or the filing or assertion of claims by Subcontractors or Sub-subcontractors), and (iii) in addition to liquidated damages, to the extent that the failure to achieve any scheduled stage of completion (other than Substantial Completion or Final Completion) designated in the Milestone Schedule as a significant milestone (for preparations or installations that Owner will do or for other activities of Owner) on or before the date therefor provided on the Milestone Schedule results in specific out-of-pocket costs or other specific damages to Owner (such as the cost of storing equipment ordered that the Building should have been sufficiently finished to house at that stage according to the Milestone Schedule), Contractor shall pay to Owner the amount thereof.

3.6 Extraordinary Measures.

- 3.6.1 If the progress of the Work falls behind that required by the Milestone Schedule (as revised to reflect any Excused Delay) in any material way, if requested by Owner, Contractor shall work additional shifts or overtime, supply additional manpower or equipment, or take other similar measures, as specified by Owner, and shall continue such measures until the progress of the Work has reached the stage then required by the Milestone Schedule (as revised to reflect any Excused Delay). Contractor shall not be entitled to an increase in the Contract Sum on account of such measures.
- 3.6.2 Owner may further direct that Contractor take the measures described in Section 3.6.1 above to make up time lost to Excused Delay, in which event Owner's directive shall be a Change Directive to the extent of the additional work necessary to recover the time lost to the Excused Delay, Contractor shall perform the requested work in accordance with Section 5.1, and the Contract Sum shall be adjusted as provided in Sections 5.1 and 5.4; provided, however, that only the incremental costs of such acceleration incurred in excess of those costs necessary to bring the progress of the Work into conformance with the Milestone Schedule (as adjusted for Excused Delay) shall be included in any increase to the Contract Sum. Alternatively, Owner may at its option submit a Proposed Change for such work in accordance with Section 5.2.
- 3.6.3 Contractor shall, within five (5) calendar days after Owner's written request, provide Owner a recovery schedule setting forth in complete detail the acceleration of the Work in accordance with the provisions of this Section 3.6.

Article 4. PROJECT AND CONSTRUCTION MANAGEMENT

- 4.1 **General Scope.** Unless otherwise specifically provided in the Contract Documents, the scope of Contractor's Work, includes all labor, materials, equipment, tools, construction equipment, machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not to be incorporated into the Work.
- 4.2 **Project Schedule.**
- 4.2.1 Contractor shall, within five (5) business days after the execution of the Agreement, submit an interim CPM schedule to Owner's Project Manager (the "**Interim Schedule**"). The Interim Schedule shall include as many activities as are reasonably necessary to sufficiently detail the work to be performed during the first ninety (90) working days and a summary schedule of the Work for the entire Project. Until the preparation of the Project Schedule in accordance with Section 4.2.2 below, the Interim Schedule shall be used to manage the scheduling and coordination of the Work.
- 4.2.2 Within sixty (60) calendar days after the date of the Agreement, Contractor shall submit to the Owner's Project Manager a detailed CPM schedule for the entire Project (the "**Project Schedule**") in Primavera P6 format, including all of the items required by Exhibit G to the Agreement. The Project Schedule shall be updated at least monthly and submitted with each Application for Payment. Contractor shall also maintain a ninety (90) day look-ahead schedule showing the activities to be performed within the immediately forthcoming ninety (90) days and shall provide a copy of such schedule to Owner upon request.
- 4.2.3 The Project Schedule shall be cost-loaded and conform to the Schedule of Values approved by Owner, and Contractor shall keep current the cost information included in the Project Schedule. If the Agreement is a CMGC Agreement, Contractor may defer

cost-loading the Project Schedule until the approval of the Second Cost Estimate but shall submit a fully cost-loaded Project Schedule within ten (10) days after such approval.

4.2.4 The Interim Schedule and Project Schedule shall conform to the Milestone Schedule. In the event of conflict between the Milestone Schedule and the Project Schedule, the Milestone Schedule shall prevail unless otherwise specifically agreed in writing by Owner. No proposed changes in the Project Schedule that would extend the Required Substantial Completion Date or Required Final Completion Date shall be binding on Owner by reason of having been included in the Project Schedule.

4.2.5 Contractor shall record the daily progress of the Project in a daily log available to the Owner and the Architect. Contractor shall submit a weekly written progress report and summaries of project-related meetings to the Owner and the Architect, including information on the subcontractors' work, labor resource levels by trade, safety violations, inspections or tests, and the percentage of completion of items relative to the approved Project Schedule.

4.3 Supervision and Construction Procedure. Contractor shall perform, supervise, direct, and coordinate the Work in accordance with the Contract Documents, and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures. Contractor shall use its best skill and attention in the prosecution of the Work. Contractor shall take reasonable measures to verify that significant Subcontractors and Suppliers have, where appropriate because of the possible unavailability of labor or materials, made reasonable arrangements for alternate sources of labor and materials so that the Project is not delayed by shortages of labor and materials which might reasonably be anticipated. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and Sub-subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with Contractor. Contractor shall be responsible to ensure that the Work is properly sequenced and that each stage of the Work is in proper condition to receive subsequent Work.

4.4 Books and Records. Contractor shall keep and maintain all books and records with respect to the Work including, without limitation, maintaining an accurate record of the Cost of Work. A copy of all such books and records shall be kept at the Site or at Contractor's office in the Denver, Colorado metropolitan area and shall be open to inspection by Owner and Architect at all reasonable times.

4.5 Site Investigation; Field Verification.

4.5.1 Contractor shall obtain information regarding existing facilities and building systems sufficient to support Contractor's Work. Such investigation shall include visual examination of actual conditions at the Site and conducting conferences with Owner's personnel familiar with the existing facilities. Contractor shall confer with Architect and Owner as may be necessary for Contractor to obtain a complete understanding of the Project and Owner's requirements for the Project insofar as they relate to the Contractor's Work.

4.5.2 Before ordering any material or doing any Construction Work, Contractor shall verify all measurements shown in the Construction Documents at the Site of the work and shall be responsible for the correctness of the same. Any differences between conditions on the Site and the Contract Documents that Contractor may observe shall be promptly reported in writing to the Architect before proceeding with any affected materials ordering or Work.

4.6 Use of Site.

- 4.6.1 Contractor shall confine operations at the Site to areas permitted by Current Laws, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Site with any materials or equipment. Contractor shall maintain the Site in a safe condition. Contractor shall not load any structure or earth, or permit any part thereof to be loaded, with a weight that will endanger safety or stability.
- 4.6.2 If any portions of an existing building are to be remodeled or repaired, such portions shall be adequately partitioned off with dust-proof partitions. Contractor's Project Schedule and management of the Site and Work shall be planned and executed to permit the completion of the Work in an orderly fashion during the school vacation periods, if any, during which it is scheduled to occur, or in such manner as to permit full use of the Site by Owner without impairment of any existing facilities.
- 4.6.3 Owner shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for completing the entire Work or such portions of the Work has not expired and even if the Work has not been finally accepted. Such possession and use shall not constitute an acceptance of such portions of the Work. Architect and Contractor shall conduct an inspection of such portions of the Work before Owner occupancy thereof. A report of items incomplete, damaged or otherwise unacceptable will be prepared by the Architect and delivered to the Contractor and Owner. This report shall be used as a record of the condition of such Work at the time of Owner's occupancy thereof and shall not be construed to constitute acceptance of such Work by Owner. Any material delays resulting from such occupancy of the Work by Owner shall constitute Owner Delay (but only to the extent that such occupancy causes actual delays in the Work that satisfy all the requirements necessary to be an Owner Delay under Section 3.4.1) unless such occupancy is rendered necessary by Contractor's failure to complete the Work in accordance with the Milestone Schedule and Project Schedule, as adjusted for Excused Delay.
- 4.6.4 If the Site is occupied by Owner, Contractor's access to the Site for Construction Work shall be limited during the school year to times outside normal school business hours and such other days and times as Owner may specifically authorize in writing. Contractor's access to an occupied Site outside the school year shall be limited to normal business hours and such other days and times as Owner may specifically authorize in writing. Contractor shall have access to an occupied Site during school district holidays only with Owner's specific written authorization.

- 4.7 Cleaning Up.** Contractor, at all times, shall keep the Work in neat and clean condition and free from waste materials or rubbish caused by its operations. At least weekly, or more often as necessary to comply with the requirements of the previous sentence and maintain a safe and efficient site, Contractor shall clean up the Site and remove all waste and materials that have not previously been removed, remove all equipment not then being used on a regular basis, remove any excess materials, and take all other actions reasonably necessary to maintain the Site in a good, clean, and orderly condition. At the completion of the Work, Contractor shall remove all its waste materials and rubbish from and about the Project as well as all of its tools, construction equipment, machinery, and surplus materials and shall clean all glass surfaces and leave the Site "broom clean" or its equivalent, except as otherwise specified. If Contractor fails to clean up as required hereby, Owner may do so and one hundred fifty percent (150%) of the reasonable cost thereof shall be paid by Contractor or deducted from any amount thereafter becoming payable to Contractor. No such charge by Owner shall be included within the Cost of Work.

4.8 Coordination with Owner's Consultants. Owner may engage consultants to inspect portions of the Work. Contractor shall cooperate with such inspections, review the inspection and laboratory reports prepared by Owner's separate consultants and advise and assist Owner in resolving any concerns raised by those reports. Contractor shall promptly notify Owner and Architect when the following work is ready for inspection before enclosing any such work:

4.8.1 Foundation bearing surfaces (where applicable)

4.8.2 Reinforcing steel after placing and prior to pouring concrete or grout.

4.8.3 Concrete placement.

4.8.4 Structural steel prior to being enclosed or covered.

4.8.5 Mechanical work prior to being enclosed or covered.

4.8.6 Electrical work prior to being enclosed or covered.

4.8.7 Each coat of specified waterproofing.

4.9 Drawings and Specifications at Site. Contractor shall maintain at the Site for Owner and Architect one copy of all drawings, specifications, addenda, approved shop drawings, Change Directives, Agreed Changes, Change Orders, and other modifications in good order and marked daily to record all changes made during construction. Contractor shall keep permanent records of all lines and levels required for excavation, grading and foundations. These drawings, specifications, and similar items shall be made available to Owner and Architect at the Site.

4.10 Manufacturers' and Subcontractors' Warranties; Manuals. Upon Substantial Completion, Contractor shall compile and deliver to Architect operation and maintenance manuals for each building included in the Project, including a copy of each warranty extending beyond the Warranty Period and a copy of each instruction manual provided to Contractor by manufacturers of equipment, machinery, and similar items, a summary of any warranty time limitations contained in third-party manufacturers' warranties, and instructions to Owner's representatives in the operation of mechanical, electrical, plumbing, and other systems constituting part of the Work. Contractor shall provide two (2) copies of each such manual for each building. Contractor shall arrange for manufacturers' representatives to assist in equipment and system start-up.

4.11 Unsuitable Conditions. The Contractor shall not perform any Work at any time, or permit any Work to be done, under any conditions unsuited to its proper execution, safety, and reliability. Any costs resulting from ill-timed work by Contractor shall be borne by Contractor, except to the extent otherwise specifically provided herein.

4.12 Owner's Separate Work.

4.12.1 Contractor acknowledges that Owner may enter into separate contracts for work to take place on the Site at the same time as the Construction Work. Contractor shall coordinate its efforts with the other activities of Owner on the Site, and Owner shall require its other contractors to coordinate their activities with Contractor, to enable the work under each contract to proceed without undue interference and to allow each contractor to perform its work that relates to the work of other contractors in a timely manner.

4.12.2 In the event of any alleged damage caused by Contractor to another contractor's work or vice versa, Contractor shall negotiate in good faith with the other contractor to settle the claim. Contractor shall indemnify, defend and hold harmless Owner from and against

any Claims of damage to another contractor's work to the extent of the negligence or fault attributable to the acts or omissions of Contractor, a Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed or engaged by them or anyone for whose acts they may be liable.

- 4.12.3 If any part of the Contractor's Work depends upon the work of any other contractor, the Contractor shall inspect and promptly (and in any event within two (2) days after discovery) report to the Architect any defects in the other contractor's work that render it unsuitable for proper execution of the Work. Contractor's failure so to inspect and report 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 latent defects that may become apparent in the other contractor's work only after the execution of the Contractor's Work. The Contractor shall measure work already in place and shall immediately report to the Architect any discrepancy between the executed work and the Contract Documents.
- 4.13 Quality Control.** Contractor shall establish and maintain a quality control program specific to the Project. Such program shall include a Project-specific quality control plan, regularly scheduled meetings to discuss quality control issues and objectives, the submittal review and approval processes required by the Contract Documents, appropriate testing and inspections, and documentation and tracking systems appropriate to the Project. A proposed written program shall be submitted to the Owner for review and approval before the commencement of the Construction Work.
- 4.14 Issue Tracking.** Contractor shall implement an effective system for recording and tracking requests for clarification and instructions, submittals, approvals, information and other responses from the Architect, Agreed Changes, Change Directives, Change Requests and other communications that define or raise questions about the Work. At each weekly progress meeting, Contractor shall identify and raise for discussion any open issues that may impact the schedule or cost of the Project.
- 4.15 Self-Work.** The Cost of Work shall, so long as the same conforms to all the requirements and restrictions set forth herein, include the labor costs incurred by Contractor in performing Self-Work. No labor costs for Self-Work shall be permitted to the extent that (i) the same exceed the lowest reasonable cost thereof which would be provided by capable and qualified Subcontractors and/or (ii) such Self-Work fails to meet standards of quality available from capable and qualified Subcontractors.
- 4.16 Project Manager and Superintendents.** The person, if any, designated as the Contractor's Project Manager and other persons designated as key members of the Project Team on Exhibit A to the Agreement shall be assigned exclusively to the Project until the Project (including the Punch List) has been completed, except to the extent that assignment of such persons to other projects is approved in writing by Owner. Contractor's Project Manager shall have authority to act on behalf of and bind the Contractor, and directions given to Contractor's Project Manager shall be as binding as if given to the Contractor. Contractor shall keep Contractor's Project Manager and necessary assistants, all of whom shall be satisfactory to Owner, on the Site at all times work is being performed. The key members of the Project Team shall not be changed without Owner's prior written consent, except in the event of termination of such persons' employment by Contractor.
- 4.17 Federally Funded Projects.** If Exhibit A to the Agreement indicates that any funds from United States government sources are to be used to pay for the Project, Contractor shall be responsible to comply with all Current Laws applicable thereto, including the Davis Bacon and Related Acts, regulations promulgated thereunder, and all other laws applicable to federally-assisted construction projects, including without limitation Title 29, Subtitle A, Part 5 of the Code of Federal

Regulations. Certain provisions required by 29 C.F.R. § 5.5 are attached to the Agreement as Exhibit J.

- 4.18 Extra Inspections.** If Contractor notifies Owner that Substantial Completion, Final Completion, or other milestones in the Milestone Schedule have been achieved but the Architect determines that the required degree of completion has not been achieved, Contractor shall be responsible to reimburse out of its own funds any fees or charges payable by Owner for later re-inspection of the Work.

Article 5. CHANGES IN THE WORK

5.1 Change Directive.

- 5.1.1 Owner may, without invalidating the Contract, direct a change in the Work and may state a proposed basis for adjustment, if any, in the Contract Sum, Required Substantial Completion Date, or Required Final Completion Date, or any combination of them, by a **"Change Directive."** Upon receipt of the Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Owner of its disagreement, if any, with the proposed adjustment of the Contract Sum, Required Substantial Completion Date and Required Final Completion Date, if any.
- 5.1.2 A Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment of the Contract Sum, Required Substantial Completion Date or Required Final Completion Date, if such is proposed by Owner. Such agreement shall be effective immediately and shall be an **"Agreed Change,"** which term, as used herein, shall mean any change in the Work as to which Contractor and Owner have agreed as any changes in the Contract Sum, the Required Substantial Completion Date and the Required Final Completion Date. If no such agreement is reached, Contractor shall give notice to Architect and Owner of its objection to the change, if any, in the Contract Sum, Required Substantial Completion Date and/or Required Final Completion Date proposed in the Change Directive within five (5) business days after receipt of the Change Directive. If Contractor fails to give such notice within such time, Contractor shall be deemed to have agreed to the proposal contained in the Change Directive, and the Change Directive shall become an Agreed Change.
- 5.1.3 If Contractor timely objects to any adjustment of the Contract Sum, Required Substantial Completion Date or Required Final Completion Date as a result of a Change Directive, then, unless otherwise agreed in writing by the Parties, the disagreement shall be a Dispute and may be submitted to Dispute Resolution.

5.2 Proposed Changes.

- 5.2.1 Owner may, without issuing a Change Directive, issue a request for the effect of a proposed change by a **"Proposed Change."** Any Proposed Change shall be in the form of a Change Directive, except that, instead of setting forth Owner's proposal for the change, if any, in the Contract Sum, Required Substantial Completion Date or Required Final Completion Date, the same shall request a proposal from Contractor therefor.
- 5.2.2 Contractor shall, as quickly as is reasonably possible after Contractor's receipt of the Proposed Change, respond in writing to each Proposed Change with a statement containing Contractor's proposal for changes in the Contract Sum, Required Substantial Completion Date or Required Final Completion Date on account of the change in the Work proposed in the Proposed Change. Such statement shall set forth specifically the

deadline by which Owner needs to approve such proposal for Contractor to proceed with the Proposed Change without delaying the Work.

5.2.3 Following Contractor's delivery of its proposal based on a Proposed Change, Owner may:

5.2.3.1 decide not to make the change requested by the Proposed Change, in which case no notice shall be required to be given to Contractor (and if Owner fails to respond on or before the deadline specified in Contractor's proposal, Owner shall be deemed not to have accepted Contractor's proposal),

5.2.3.2 agree in writing to Contractor's proposal by notice given to Contractor on or before the deadline set forth in Contractor's proposal, in which case, the Proposed Change, with any changes in the Contract Sum, Required Substantial Completion Date or Required Final Completion Date determined in accordance with Contractor's proposal, shall become an Agreed Change, or

5.2.3.3 issue a Change Directive with respect to any part or all of the changes, in which case the Change Directive shall be processed in the same manner as any other Change Directive without consideration being given to Contractor's proposal for determining the Contract Sum, Required Substantial Completion Date and Required Final Completion Date.

5.3 Changes not Requiring a Change Order. The Architect may order minor changes in the work, not involving an adjustment in the Contract Sum or an extension of the Required Substantial Completion Date or Required Final Completion Date and not inconsistent with the intent of the Contract Documents, by notice to Owner and Contractor specifying the change proposed and making reference to this Section 5.3. No such proposed change shall adversely affect the quality or the value of the Work described in the Contract Documents, or provide for a substitution of materials of an inferior quality to those specified in the Construction Documents. Owner may object to such proposed change by notice given to Architect and Contractor on or before the end of the fifth (5th) business day after Architect's notice is received by Owner, in which case the change shall be rejected and not implemented by Contractor. If Owner approves the change or fails to object thereto within such time, such change shall become an Agreed Change.

5.4 Determination of the Cost or Savings Attributable to a Change Directive. Changes in the Contract Sum resulting from a Change Directive shall be determined by agreement of Contractor and Owner, acting reasonably, based on any or all of the following:

5.4.1 reasonable estimates,

5.4.2 unit prices, or

5.4.3 other reasonable method for determining reasonable expenditures and savings.

5.5 Change Pricing. All pricing information provided by Contractor in connection with a Change Directive or Proposed Change shall include itemized amounts for at least the following categories of costs (as applicable):

5.5.1 material quantities and unit prices by division;

5.5.2 labor costs based on stated estimated hours and hourly rates for each classification of labor;

- 5.5.3 field supervision costs;
- 5.5.4 costs of construction equipment;
- 5.5.5 insurance and bond premiums;
- 5.5.6 Social Security tax and other payroll and unemployment taxes; and
- 5.5.7 overhead and profit (based on the same percentage of Direct Hard Costs used to compute the Construction Fee, or, if the Construction Fee is an agreed lump sum, based on the same ratio that the originally agreed Construction Fee bears to the originally scheduled Direct Hard Costs).

When both additions and credits are involved in any one change, the change in the Contractor Fee (if the same is a percentage of the Direct Hard Costs) shall be figured on the basis of the net increase or decrease, if any. In no event shall the combined amount of overhead and profit for Subcontractors, Sub-subcontractors, and Contractor with respect to any additive change exceed fifteen percent (15%) of costs of labor and materials associated with the change that are payable under the Contract.

- 5.6 **Change Orders.** Each month, as part of the Application for Payment, Contractor shall prepare a “**Change Order**,” which shall be a summary of all Agreed Changes approved for such month, a summary of the Agreed Changes, if any, in the Contract Sum and Required Substantial Completion Date as a result of such changes. If, at the end of the month, any Change Directives have been issued as to which the changes, if any, in the Contract Sum and Required Substantial Completion Date have not been agreed to, the Application for Payment shall also include a list of all of such Change Directives.
- 5.7 **Tracking.** The Architect shall assign tracking numbers to Proposed Changes, Change Directives and Agreed Changes, and the Contractor shall assign tracking numbers to Change Orders, which the parties shall use in all correspondence related thereto for ease of reference.

Article 6. SUBCONTRACTORS, SUPPLIERS AND PERSONNEL.

6.1 Terms of Subcontracts.

- 6.1.1 Those portions of the Work that are not Self-Work as permitted hereby shall be performed under subcontracts or by other appropriate agreements with Contractor. By appropriate written agreement, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Owner. Each subcontract agreement shall satisfy all requirements therefor contained in the Contract Documents, shall preserve and protect the rights of Owner under the Contract with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Owner.
- 6.1.2 Each subcontract agreement shall contain a clause that allows Contractor to terminate a subcontract if the Subcontractor is added to the GSA Excluded Parties List Report during performance of the Work. Where appropriate (for example, for significant Subcontractors), Contractor shall require each Subcontractor to enter into similar

agreements with Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

- 6.1.3 Each contract entered into by Contractor with any Subcontractor shall require that each such Subcontractor include, in its respective contracts with any Sub-subcontractor, for the benefit of Owner, payment documentation requirements substantially similar to those set forth in the Contract Documents (including those providing for retainage, procedures for submitting applications for payment, and payment procedures), as well as any other provisions expressly stated in the Contract Documents to be included in each such Subcontractor's contracts with their respective Sub-subcontractors. Contractor shall require Subcontractors to submit applications for payment to the Contractor in time for the Contractor to submit its Application for Payment on the basis of such Subcontractors' Work within the time required by the Contract Documents.
- 6.1.4 Each subcontract agreement for a portion of the Work and each contract for supplying materials is assigned by Contractor to Owner; provided that the assignment is effective only after termination of the Contract by Owner for cause and only for those agreements which Owner accepts by notifying the Subcontractor or Supplier in writing at or after the time of such termination. Each subcontract agreement with a Subcontractor or each contractor with a supplier shall permit the subcontract agreement to be assigned to Owner and shall obligate the Subcontractor to recognize any such assignment which becomes effective and to render its performances thereunder to Owner after the effectiveness of any such assignment and shall provide that Owner shall be responsible to the Subcontractor only for those obligations of Contractor that accrue subsequent to Owner's exercise of any rights under this conditional assignment. Except as provided in this paragraph, nothing in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor or Sub-subcontractor and the Owner.
- 6.2 Equal Opportunity.** Owner intends and expects that its contracting processes and the contracting processes of its professional designers and consultants, contractors, and vendors, including professional designers and consultants, shall provide equal opportunity without regard to gender, race, ethnicity, religion, age, or disability, and that its vendors shall make available equal opportunities to the extent third parties are engaged to provide goods and services to Owner as contractors, subcontractors, consultants, vendors, or otherwise. Accordingly, Contractor shall not discriminate on any of the foregoing grounds in the performance of the contract, and shall make available equal opportunities to the extent third parties are engaged to provide services in connection with performance of the contract. Joint ventures, partnerships, or other cooperative relationships between contractors or vendors and MBE, WBE, SBE, and DBE firms may be considered one indication of good faith intention to comply with this requirement. Each contractor and vendor shall disseminate information regarding all subcontracting opportunities under this contract in a manner reasonably calculated to reach all qualified potential subcontractors who may be interested. Contractor shall comply with, and maintain records of its compliance with, the provisions of Exhibit F to the Agreement with respect to equal opportunity contracting and shall make such records available to the District upon the District's request.
- 6.3 Discipline; Sufficiency of Skilled Workers; Removal.** Contractor shall, at all times, enforce strict discipline and good order among its employees and Subcontractors, and shall not employ or engage any unfit person or anyone not skilled in the task assigned to him for any portion of the Work. Contractor shall require that plumbers, pipefitters, and electricians have sufficient numbers of journeymen workers on the site to maintain on the site a ratio of journeymen to apprentices of

not less than one to two (1:2). Smoking, possession of weapons, possession and/or consumption of alcoholic beverages and any other activities which are deleterious to Owner's operations are strictly prohibited. Discourteous or aggressive behavior toward staff, students or the general public will not be tolerated. Owner may require by notice to Contractor that any worker that Owner determines to be careless, incompetent, unskilled, or otherwise objectionable be dismissed from work on the Project.

- 6.4 Colorado Labor.** As required by C.R.S. § 8-17-101, Colorado Labor shall be employed to perform the work to the extent of not less than eighty percent at each type or class of labor in the several classifications of skilled and common labor employed on the Project.

Article 7. INSPECTIONS; CORRECTION OF DEFECTS

- 7.1 Inspections.** Owner, Architect and their representatives and consultants shall have reasonable access to the Work during normal business hours and any non-business hours when construction is scheduled to occur, and Contractor shall permit and facilitate inspection of the Work by Owner, Architect, their representatives, and public authorities concerned with such Work.

- 7.3 Notice of Defect.** If prior to Substantial Completion, Owner or Architect determines that the Work is defective or not in accordance with the Contract Documents, Owner or Architect shall give written notice to Contractor promptly (i.e. within five (5) business days) after discovering such defect(s). Architect has authority to stop the Work whenever such stoppage may in Architect's judgment be necessary to insure the proper execution of the Work.

7.4 Warranty and Correction of Work During Construction.

- 7.4.1** Contractor warrants that all materials shall be new unless otherwise specified, and specifically approved in writing by Owner in each instance, and all of the Work will be performed in a good and workmanlike manner, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these standards, including substitutions not allowed by the Contract Documents, will be considered defective.
- 7.4.2** If required by Architect or Owner, and upon their written request therefor, Contractor shall furnish reasonable evidence as to the kind and quality of materials and equipment supplied by Contractor pursuant to the Contract.
- 7.4.3** Architect and Owner shall have the authority to reject Work not conforming to the Contract Documents. Contractor shall, upon the directive of the Architect, remove and replace any non-conforming materials, at Contractor's sole cost, without an adjustment in the Contract Sum or the Required Substantial Completion Date.
- 7.4.4** Contractor shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner. Contractor shall, if required by Owner, furnish evidence reasonably satisfactory to Owner as to the kind and quality of materials. No materials shall be substituted for those specified except by Agreed Change. Where standards, publications or other specifications of technical societies or testing organizations are identified in the Contract Documents, the latest revisions of the same as of the date of the Request for Proposals or bid opening shall govern unless indicated otherwise. No materials shall be substituted for those specified except by Agreed Change.
- 7.4.5** Contractor shall be responsible to correct, at its cost, any damage to other contractors' work resulting from the uncovering or correction of defects in the Work.

- 7.5 Uncovering Work.** The Work may be covered by Contractor as the Work progresses in accordance with the Milestone Schedule, Contract Documents and the Project Schedule. If a portion of the Work is covered contrary to Architect's written request delivered to Contractor or contrary to requirements specifically expressed in the Contract Documents, it must, if required in writing by Architect or Owner, be uncovered for Architect's and/or Owner's observation and be replaced at Contractor's expense without change in the Required Substantial Completion Date, Required Final Completion Date or the Contract Sum. If a portion of the Work has been covered in accordance with the Milestone Schedule, Contract Documents and the Project Schedule which Architect and Owner have not specifically requested to observe prior to its being covered, Architect or Owner may request to see such Work and it shall be uncovered by Contractor. If the Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Agreed Change, be charged to Owner, and the time required to uncover and recover such Work shall be an Owner Delay (but only to the extent of that such activities cause actual delay in the Work that satisfies all the requirements necessary to be an Owner Delay under Section 3.4.1). If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs unless the condition was caused by Owner in which event Owner shall be responsible for payment of such costs and the time lost in uncovering and recovering the Work shall not be an Owner Delay, and there shall be no change in the Required Substantial Completion Date.
- 7.6 Failure to Correct Defect.** If Contractor fails to correct defective or nonconforming Work in accordance with the above provisions, Owner may correct it, and an Agreed Change will be issued reducing the Contract Sum by 125% of Owner's out-of-pocket cost of correcting the Work. In the alternative, Owner may order Contractor to stop the Work, or any portion thereof, or may deduct 125% of the value thereof from Contractor's Applications for Payment, until Contractor corrects the defective or nonconforming Work as provided above.
- 7.7 Acceptance of Defective Work.** If Owner prefers to accept defective or nonconforming Work, it may do so in writing within ten (10) business days of the date it is discovered by Owner instead of requiring its removal and/or correction. In that event, Contractor and Owner shall execute an Agreed Change providing for an equitable reduction in the Contract Sum; or, if the amount is determined after Final Payment, Contractor shall pay the amount of such equitable reduction to Owner. If Owner and Contractor are unable to agree on the amount of such reduction of the Contract Sum within ten (10) business days after Owner determines not to replace the defective Work, the amount of such reduction shall be a Dispute and may be submitted to Dispute Resolution by either party.

Article 8. PROTECTION OF PERSONS AND PROPERTY

8.1 General Requirement.

- 8.1.1** Contractor shall take all necessary precautions for the safety of its employees and those of its Subcontractors and Sub-subcontractors (and any personnel of Suppliers or others on the Site) in connection with the Work, and shall comply with Current Laws regarding worker health and safety and the prevention of accidents or injury to persons on or about the Site (including the Occupational Safety and Health Act of 1970 as amended, the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910 as amended, safety laws of the State of Colorado, and other safety laws and regulations).
- 8.1.2** Contractor shall take all necessary precautions for safety of and shall provide reasonable protection to prevent damage, injury, or loss to (a) persons on or about the Site, (b) the Work and materials and equipment to be incorporated therein, and (c) other property at the site or adjacent thereto such as, trees, shrubs, lawns, walks, pavements, roadways,

structures, and utilities not designated for removal, relocation or replacement in the course of the performance of the Work.

- 8.1.3 Contractor shall erect and properly maintain at all times reasonable safeguards and signage for the protection of workers and the public as required by the conditions and progress of the Work. As between Contractor and Owner, Contractor shall be responsible for initiating, maintaining, supervising and enforcing all safety precautions and programs in connection with the performance of the Work. Contractor's office on the Site shall be equipped at all times with articles necessary for giving first aid in the event of injury and illness. Contractor shall have standing arrangements for the immediate removal and hospital treatment of any person who may be injured or who may have become ill on the job.
- 8.1.4 Contractor shall notify Owner of any work related injuries that result in "loss of work days" or require medical attention suffered by any employees of Contractor and any Subcontractors and Sub-subcontractors (including any personnel of Suppliers or others on the Site) within twenty four (24) hours of the occurrence of such injury, including a written report of how the injury occurred and what, if any, corrective actions have been implemented to prevent similar accidents from occurring on the Site in the future.
- 8.2 **Underground Facilities.** Contractor shall physically verify the location of all buried utilities within twenty-five (25) feet of any excavation area before beginning excavation Work. The location of such utilities shall be recorded by a registered professional land surveyor and a map showing the precise locations of such utilities shall be provided to Architect and Owner in electronic (AutoDesk DWG) format. Contractor shall provide such information to its Subcontractors and personnel engaged in excavation work and shall be responsible to protect all such utilities from damage.
- 8.3 **Public Ways.** Contractor shall take all appropriate precautions when obstructing or partially obstructing sidewalks, streets or other public ways, shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary to assure the safe passage of pedestrians and automobiles, and shall obtain all required permits for such obstructions and safety structures.
- 8.4 **Safety Equipment.** The Contractor shall provide all safety equipment necessary for Owner and Owner's consultants to inspect the Work in a safe manner, including harnesses, tie-offs and other special equipment that may be necessary for safe access to and observation of the Work.
- 8.5 **Site Security.** Contractor shall take all appropriate measures to protect the Site, persons and materials stored thereon from theft, vandalism and other intrusion or harassment and shall comply with any standards, policies or directives of Owner with respect thereto, including:
 - 8.5.1 Contractor shall not utilize any laborer, employee or subcontractor who has been convicted of a violent or sexual crime, crime involving a minor, or any other crime of such nature;
 - 8.5.2 Contractor, its laborers, employees or subcontractors, shall not fraternize or otherwise communicate with students except in cases of safety and/or emergencies;
 - 8.5.3 Contractor shall not allow any laborer, employee or subcontractor to wear clothing that is inappropriate for students to view ("Objectionable Clothing") and ensure that its laborers, employees and subcontractors maintain professional workmanlike attire. Owner, or its on-site personnel, shall determine, in its sole judgment, whether clothing is Objectionable Clothing;

- 8.5.4 Contractor shall ensure that its laborers, employees and subcontractors do not use or have in their possession any controlled substances on the Site including tobacco, alcohol, and illegal drugs; and
- 8.5.5 Contractor shall ensure that its laborers, employees and subcontractors do not possess any weapon.

8.6 Notice Requirements.

- 8.6.1 Whenever Owner's personnel becomes aware of any noncompliance with these requirements under this Article 8 or any condition which poses a serious or imminent danger to the health or safety of the public, Owner's staff or students, or other worksite personnel, Owner's Project Manager shall notify the Contractor orally, with follow up written confirmation, and request immediate corrective action.
- 8.6.2 Notice delivered to Contractor or Contractor's representative at the Site, either orally or in written form, in accordance with Section 8.6.1 shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving such notice, Contractor shall immediately take all appropriate corrective action to eliminate the hazard.
- 8.6.3 If Contractor fails or refuses to promptly take proper corrective action, Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken, and Contractor shall immediately comply with any such order. Owner's failure to issue such an order shall not relieve Contractor of the obligation to stop Work if necessary to properly correct a hazard. Contractor shall not be entitled to any equitable adjustment to the Contract Sum, Required Substantial Completion Date or Required Final Completion Date on account of any order to stop Work issued under this Article. The cure periods provided for Events of Default in Section 14.1 shall not be construed to limit the Owner's right to stop the Work in accordance with this paragraph.

Article 9. PERMITS AND LICENSES; COMPLIANCE WITH CURRENT LAWS

- 9.1 Permits.** Before commencing Construction Work, Contractor shall obtain and pay for all building permits, applications, licenses and inspections required by the AHJ and any other government agency with jurisdiction for the prosecution of the Work, including any applicable state mechanical and electrical permits and City and County of Denver hotwork permits. Contractor shall pay all applicable State of Colorado Electrical, Plumbing and Boiler Inspection fees. Without limiting the generality of the foregoing sentence, Contractor shall, at its cost, obtain all required permits and pay all building permit fees, water department system development fees, wastewater management fees, sewer availability and metropolitan district fees, mechanical, electrical, plumbing and boiler permit and inspection fees.
- 9.2 Licensed Trades.** All Work shall be performed by licensed workers where such licenses are required by law, including state-licensed plumbing and electrical trades and Denver Fire Department licensed fire safety systems installers. It is the responsibility of the Contractor to investigate whether licensing is required for the performance of a particular part of the Work. Fire safety systems requiring licensing may include Automatic Fire Sprinkler Systems, Fire Alarm and Detection Systems, Special extinguishing systems (wet/dry chemical systems), Portable Fire Extinguishers, Fire Pumps, Emergency Generators, Emergency Communications Systems and Radio Signal Enhancement Systems.

9.3 Licensed Supervision. In the event Current Laws require that the Work or any part thereof be supervised by a licensed supervisor, the Contractor shall provide a licensed on-Site supervisor to supervise the execution of the Work or such part thereof, as applicable.

9.4 Worker Status. The Contractor shall certify the status of its and its Subcontractors' workers as provided herein.

9.4.1 All Contractors: Contractor agrees to the following terms and shall submit certification thereof from time to time as required by Owner:

9.4.1.1 Contractor certifies that it has complied with and shall during any Work continue to comply with the provisions of C.R.S. § 8-17.5-101, *et seq.* As further provided in that statute, Contractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Contract.

9.4.1.2 Contractor represents, warrants, and agrees that Contractor:(i) through participation in the "E-Verify" Program administered by the Social Security Administration and Department of Homeland Security, has verified that it does not employ any illegal aliens; and (ii) otherwise will comply with the requirements of C.R.S. § 8-17.5-102(2)(b). Without limiting the generality of the foregoing provisions:

(a) Contractor represents and warrants that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform any part of the Work through either the "E-Verify" program or the Colorado Department of Labor and Employment; and

(b) Contractor shall not use either the "E-Verify" program or the Colorado Department of Labor and Employment program procedures to undertake preemployment screening of job applicants while performing Work.

9.4.1.3 If Contractor obtains actual knowledge that a Subcontractor performing Work knowingly employs or contracts with an illegal alien, Contractor shall:

(a) Notify the Subcontractor and Owner within three (3) days that the Contractor has actual knowledge that the Subcontractor is employing or contracting with an illegal alien; and

(b) Terminate the subcontract with the subcontractor if within three (3) days of receiving such notice the Subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the Subcontractor if during such three (3) days the Subcontractor provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien.

9.4.1.4 Contractor shall cause each Subcontractor and all Sub-subcontractors to provide to Contractor the certifications required by Section 9.4.1.1 above and to comply with the provisions of Sections 9.4.1.2 through 9.4.1.5.

9.4.1.5 Contractor shall comply with all reasonable requests made in the course of an investigation under C.R.S. § 8-17.5-102 by the Colorado Department of Labor

and Employment. Contractor shall fully cooperate with any investigation to determine if Contractor is in compliance with the provisions of C.R.S. § 8-17.5-101 et seq., which may include on-site inspections, reviewing proof of citizenship documentation of any person participating in the Work, or any other reasonable and necessary measures to determine the Contractor's compliance with such law.

9.4.1.6 In the event of a violation of the provisions of this Section 9.4 by Contractor, in addition to any other remedies Owner may have under the Contract, at law or in equity, Owner shall be entitled to terminate the Contract and/or recover from Contractor all of its direct and consequential damages resulting from such violation, including without limitation all costs, attorneys' fees, fines, penalties, and other losses incurred by Owner in connection with such violation.

9.4.2 Sole Proprietorships: If Contractor is a sole proprietor or individual, Contractor agrees to the following terms and shall execute a sworn or affirmed affidavit thereof from time to time as required by Owner:

I, [Contractor] as a sole proprietor/individual, hereby swear and affirm under penalty of perjury that I am [the Contractor] (i) a citizen of, or otherwise lawfully present in the United States pursuant to federal law, and the provisions of CRS § 24-76.5-101 et seq, (ii) and as proof have submitted one of the required forms of identification before the commencement of any work on this contract; and (iii) have or have attempted to verified that my Subcontractor(s), employee(s), and applicant(s) who is/(are) natural person eighteen years of age or older is/(are) lawfully present in the United States pursuant to CRS § 24-76.5-103(4).

If Contractor is an individual or sole proprietor, Contractor shall also produce for review and copying by Owner one of the following forms of identification before performing any Work: (i) a valid Colorado driver's license or a Colorado identification card; (ii) United States military card; (iii) a United States Coast Guard Merchant Mariner card; or (iv) a Native American tribal identification document.

9.5 General Compliance With Current Laws. Contractor shall comply with, and the Work shall conform to, all Current Laws. If Contractor observes that any of the Contract Documents are at variance with Current Laws in any respect, it shall promptly notify Architect and Owner in writing, and any necessary changes shall be adjusted by appropriate modification of the Contract Documents. If, during the performance of the Contract by Contractor, Contractor becomes aware of any change in Current Laws that are directly applicable to the Work from those in force as of the date hereof, Contractor shall give Architect and Owner written notice of such change promptly after Contractor becomes aware of the promulgation of such new law or regulation or interpretation thereof. Such notice shall include Contractor's estimate of the impact (if any) of such change on the Contract Sum, Required Substantial Completion Date and Required Final Completion Date. An Agreed Change reflecting any such impact, including an increase or decrease in the Contract Sum, if applicable, shall be made to account therefor. If Contractor performs any Work under any circumstances where it knew or should have known that such Work failed to comply with any Current Laws and failed to give notice thereof to Architect and Owner, Contractor shall correct such Work at its cost or pay Owner for the correction thereof.

Article 10. BONDS

10.1 Required Bond or Bonds. The Contractor shall furnish a contractor's performance and payment bond on forms supplied by the Owner, executed by a corporate bonding company licensed to transact such business in the State of Colorado and acceptable to the Owner, in the full amount of the Contract Sum (or, if the Agreement is a CMGC Agreement, the Guaranteed Maximum

Price). The bond shall contain terms that comply with all the requirements of C.R.S. § 38-26-105 and -106 and any greater requirements imposed by this Contract. If at any time a surety on such a bond becomes irresponsible or loses its right to do business in the State of Colorado, the Owner may require another surety acceptable to the Owner, which the Contractor shall furnish within ten (10) days after receipt of written notice to do so. The term of the performance bond shall commence on the effective date of the Contract and shall not be withdrawn until the end of the Warranty Period as specified herein unless the Owner, in its sole and absolute discretion, approves the substitution of a warranty bond during the Warranty Period.

Article 11. WARRANTY

- 11.1 Correction of Defective Work on Building and Infrastructure.** If, within the Warranty Period, any of the Work is found to be not in accordance with the requirements of the Contract Documents or is found to be defective in workmanship or materials, Contractor shall correct it promptly after receipt of written notice from Architect or Owner to do so unless Owner has previously expressly accepted such condition in writing. Deficiencies which impair the safety or habitability of a building shall be considered emergencies, and work to correct the same shall be commenced immediately upon notification of the deficiency and promptly, continuously and diligently pursued to completion. As used herein, (“**Warranty Period**”) shall mean the period of twenty-four (24) months after the date of Final Completion of the Work, as extended by terms of any longer applicable special warranty required by the Contract Documents.
- 11.2 Warranty Inspections.** Contractor, Owner and Architect shall make at least three (3) complete inspections of the Work after Final Completion. One such inspection shall be made approximately three (3) months after Final Completion of the Work, the second at twelve (12) months and the third at twenty-three (23) months after Final Completion. Contractor shall be responsible to coordinate such inspections. At each such inspection, Contractor and Architect shall thoroughly examine the Work to confirm that all portions thereof are in accordance with the Construction Documents.
- 11.3 Public Improvements.** If the Work includes any public improvements, Contractor shall correct all such portions of the Work which are found to be defective as required by the applicable governmental authorities for the acceptance into maintenance of such public improvements by such governmental authorities until the same have been accepted into maintenance by the applicable governmental authority and Owner has been released from responsibility for correcting defects or repairing damage to such public improvements; provided, however, that Contractor shall not be responsible for any damage thereto caused by the operations of Owner or its successors.
- 11.4 Self-Help.** If Contractor does not proceed with correction of nonconforming Work within a reasonable time after written notification from Architect or Owner, and in any event within fourteen (14) days (unless Owner in writing approves a longer period of time), Owner may correct it, including the removal and disposition of any portion thereof which Owner replaces in connection with such correction. Owner may dispose of any salvable portion of such removed materials in any manner Owner determines; provided that any proceeds from the disposition thereof shall be credited to Contractor's obligations under this Section. Contractor shall promptly pay to Owner one hundred twenty-five percent (125%) of Owner's out-of-pocket costs of correcting such Work.
- 11.5 Longer Warranties.** Extended warranties for such longer period(s) of time as may be prescribed by the terms of any applicable special guarantee(s) required by the Contract Documents shall be provided by the applicable manufacturer, vendor, or Subcontractor as required by the Contract Documents. Owner shall be required to perform routine and appropriate regular maintenance during the Warranty Period.

11.6 No Limitations Created. Nothing contained in this Article 11 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the time periods specifically provided in this Article shall relate only to the obligations of Contractor specifically provided in this Article and shall have no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than as specifically provided in this Article.

11.7 Survival. The obligations of Contractor under this Article 11 shall survive acceptance of the Work under the Contract and termination of the Contract.

Article 12. INSURANCE; RISK OF LOSS

12.1 Contractor's Insurance – CGL, Auto, Workers' Compensation, Property. Contractor shall maintain in force during the performance of all Work and all warranty work under the Contract the following insurance coverages:

- 12.1.1 Commercial General Liability Insurance, written on an "occurrence" form and not a "modified occurrence" or "claims made" form, covering bodily injury, property damage and personal injury with a limit of liability not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 general aggregate. The aggregate limit of liability is to apply separately to the Contract. Such insurance coverage shall include (a) premises and operations, (b) products/completed operations, and (c) explosion, collapse and underground (XCU). All such coverage shall extend to all operations by or on behalf of Contractor (including those of any Subcontractor). Such policy shall provide that costs of defense are covered in addition to and not as part of the limits of liability.
- 12.1.2 Business automobile liability coverage for liability arising from any automobile (including owned, hired, and non-owned automobiles) with minimum limits of \$1,000,000 combined single limit each accident.
- 12.1.3 Workers' compensation insurance with at least the coverages and limits required by state law and including occupational disease coverage, and employer's liability insurance with minimum limits of \$1,000,000 bodily injury for each accident, \$1,000,000 per employee for disease, and \$1,000,000 disease aggregate.
- 12.1.4 Property insurance covering the full replacement cost of any property of Contractor that may be used in connection with the Work, including without limitation any property that may be brought on the Site.
- 12.1.5 Each Commercial General Liability policy and automobile liability policy shall include an Additional Insured Endorsement issued to all of the Owner Parties, with such additional insured coverage provided on a primary and non-contributory basis. The Additional Insured Endorsement to the Commercial General Liability policy shall include completed operations coverage.
- 12.1.6 Each policy carried by Contractor and its Subcontractors and Sub-subcontractors shall include a waiver of subrogation endorsement for the benefit of Owner Parties.
- 12.1.7 Umbrella or Excess Following Form Insurance with limits of liability not less than those provided on Exhibit A to the Agreement, providing excess commercial general liability, auto liability and employer's liability. Such umbrella or excess policy shall be endorsed to name the Owner Parties as additional insured on a primary and non-contributory basis.

12.2 Subcontractors and Sub-subcontractors. Unless otherwise agreed in writing by Owner, Contractor shall require each Subcontractor to maintain the same insurance coverages to be provided under Section 12.1 above except as to umbrella and excess liability coverage. Each liability policy the Contract Documents require to be carried by Contractor shall include coverage for liability arising out of the activities of Contractor's Subcontractors in the scope of their engagement as Subcontractors.

12.3 Builder's Risk.

12.3.1 Unless Owner elects at its sole option to obtain builder's risk insurance for the Project, Contractor shall purchase and maintain builder's risk insurance on the entire Work for the full insurable replacement cost of the Work, on a completed value basis, with permissible deduction of the cost of excavations, foundations below the lowest basement floor, underground flues, underground pipes, underground wiring, sidewalk, driveways, curbs and gutters, street improvements, and fences. Such coverage shall be in force before the commencement of Construction Work and shall remain in effect until Final Completion of the Project and include permission to occupy the Site. The builder's risk policy shall not include a coinsurance clause, and any deductible amounts under such insurance policy shall be the responsibility of Contractor. Such insurance shall insure against "all risk" of physical loss or damage including coverage for theft, vandalism, malicious mischief, collapse, debris removal (including demolition occasioned by enforcement of any applicable legal requirements), loss resulting from faulty workmanship, faulty materials or error in design, and offsite storage and transit exposures, and shall also cover reasonable compensation for any plans and specifications, services, and expenses required because of such insured loss.

12.3.2 The builder's risk policy shall name the Owner as the Insured, and any loss shall be payable to the Owner, as trustee, except to the extent that it may be necessary to permit payment of all or a portion of such insurance to a lessor or mortgagee as its interests may appear. Insurance for loss caused by flood, surface waters, and earthquake shall not be required unless otherwise provided in the Contract Documents.

12.3.3 Contractor shall provide Owner copies of documents evidencing the cost to Contractor of the insurance required by this Section 12.3. Owner may, at its option, directly obtain the insurance required by this Section 12.3, in which event (i) Contractor shall be named as an additional insured under such policy and (ii) if the Contract Sum included reimbursement of the costs of such coverage, it shall be reduced by the amount the Contractor would have had to pay for such coverage.

12.3.4 If Owner engages separate contractors to perform work in the Building, Owner may require the value of such third-party work to be included in the coverage under the builder's risk policy; provided, however, that Owner shall be responsible to reimburse Contractor for the incremental costs of such additional coverage and such reimbursement shall not be credited against the Contract Sum.

12.4 Pollution Coverage. If requested by Owner, Contractor shall purchase and maintain contractor's pollution liability coverage covering third-party injury and property damage claims, including cleanup costs incurred as a result of pollution conditions arising from Contractor's operations and completed operations. Such completed operations coverage shall remain in effect for no less than three (3) years following Final Completion. Such policy shall be in force and have an effective date before the commencement of Construction Work. The Owner Parties shall be named as an additional insured under such policy. The limits of such pollution liability coverage shall be at least \$1,000,000 per occurrence and in the aggregate, unless Exhibit A to the Agreement provides for higher limits. If Owner requests that Contractor carry such insurance, the

costs thereof shall be included in Soft Costs and the Contract Sum shall be increased if necessary to include such costs.

- 12.5 Certificates of Insurance.** A certificate of insurance reasonably satisfactory to Owner evidencing each policy to be maintained by Contractor pursuant to this Article or, at Owner's request, a copy of each such policy shall be delivered to Owner before the commencement of Work. Such certificates shall provide that such insurance will not be cancelled without thirty (30) days prior written notice to Owner (ten (10) days in the event of non-payment of premiums). Contractor shall provide certificates of insurance evidencing replacement or renewal policies that conform to the requirements of this Section 12.5 at least fifteen (15) days before Contractor's then existing policies expire and from time to time upon request of Owner. Upon request, Contractor shall provide Owner complete copies of the insurance policies required by the Contract Documents. Contractor shall obtain certificates of insurance and monitor policies of insurance maintained by Subcontractors as is necessary to assure that Subcontractors all carry the insurance required hereby.
- 12.6 Additional Insured Endorsements.** All "additional insured" coverage required under the Contract Documents shall be evidenced by proper endorsements to the respective policies of insurance. Identification of a party as "additional insured" on a certificate of insurance shall not satisfy Contractor's obligations to obtain such endorsements and furnish the same to Owner.
- 12.7 Other General Requirements.**
- 12.7.1 Each of the policies of insurance required by the Contract Documents shall, in addition to the provisions specifically required herein, include the minimum coverages, terms and conditions of Insurance Services Office forms of policies and endorsements.
- 12.7.2 All insurance policies required by this Article 12 shall be written by companies licensed to write insurance in Colorado with an A.M. Best rating of at least A-/VIII and otherwise reasonably satisfactory to Owner.
- 12.7.3 All insurance coverage carried by Contractor shall be primary, and any insurance coverage carried by Owner Parties shall be only excess coverage.
- 12.8 Failure to Insure.** In the event Contractor or any Subcontractor fails to maintain any insurance required by this Article 7, such failure shall be a default of the Contract, and, in addition to Owner's other remedies under the Contract, at law or in equity, Owner may procure such additional insurance for the benefit of itself and/or Contractor as Owner reasonably deems necessary to protect its interests and Contractor shall be liable to reimburse Owner for one hundred fifteen percent (115%) of its costs of such insurance.
- 12.9 Waiver of Subrogation.** Owner waives all rights against Contractor and its Subcontractors, agents and employees, and Contractor waives all rights against the Owner Parties, for damages caused by perils covered by property insurance obtained pursuant to the Contract or other applicable property insurance to the extent of such coverage, except such rights as they have to proceeds of such insurance. Contractor shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties identified in this Section 12.9. Owner and Contractor shall cause their respective insurers to waive all rights of subrogation, and the policies shall provide such waivers of subrogation by endorsement if an endorsement is required.

Article 13. INDEMNIFICATION

- 13.1 Contractor's Indemnification.** Contractor shall indemnify and hold harmless the Owner Parties from and against claims, damages, losses and expenses, including reasonable attorneys' fees

and costs, arising out of or resulting from performance of the Work (collectively and individually, “**Claims**”), provided, however, that Contractor shall be obligated to indemnify and defend Owner Parties from and against Claims arising out of death or bodily injury to persons or damage to property only to the extent of the degree or percentage of negligence or fault attributable to the acts or omissions of Contractor, a Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed or engaged by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights to obligations otherwise undertaken by Contractor pursuant to the terms of this Contract. In the event that any term or provision of this paragraph is void under applicable law, the terms and provisions of this paragraph shall be limited to the extent necessary to render this paragraph valid, and as so limited, the terms and provisions of this paragraph shall be given full force and effect.

13.2 Limitations Not Applicable. In claims against any person or entity indemnified under this Article 13 by an employee of Contractor, a Subcontractor, Sub-subcontractor, Supplier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Article 13 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor, Sub-subcontractor, or Supplier under worker’s or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

13.3 Employee Benefits. To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel acceptable to Owner) and hold harmless the Owner Parties from any Claims with respect to any Employee Benefits for the benefit of Contractor and/or any of its employees, Subconsultants, agents, or anyone else acting on behalf of or at the request of the Contractor, that may be asserted against or imposed on the Owner Parties (except to the extent such Claims arise from a separate direct relationship between the claimant and an Owner Party unrelated to the Services or the Contract). Contractor shall reimburse the Owner for any award, judgment or fine against the Owner based on any claim that has as an element the proposition that Contractor or any of its employees, Subconsultants, agents, or anyone else acting on behalf of or at the request of the Contractor became entitled to Employee Benefits by virtue of activities undertaken in connection with the provision of Services under the Contract.

Article 14. DEFAULTS, REMEDIES AND TERMINATION

14.1 Default by Contractor. Time is of the essence of Contractor’s obligations under the Contract. Contractor shall be in default under the Contract upon the occurrence of any of the following:

- 14.1.1 Contractor fails, except in cases of Excused Delay, to commence the Work in accordance with the Milestone Schedule.
- 14.1.2 Contractor fails, except in cases of Excused Delay, to make progress on the Work substantially in accordance with the Milestone Schedule.
- 14.1.3 Contractor fails, except in cases of Excused Delay, to prosecute the Work to Substantial Completion and Final Completion in a diligent, efficient, workmanlike, skillful, and careful manner in accordance with the provisions of the Contract Documents.
- 14.1.4 Contractor fails, except in cases of Excused Delay, to supply an adequate amount of properly skilled workers, materials, or equipment to complete the Work in accordance with the requirements of the Contract Documents.
- 14.1.5 Contractor ceases or suspends Work other than in accordance with the express terms of the Contract Documents.

- 14.1.6 Contractor fails to make payment to Subcontractors, Suppliers, or others in accordance with Contractor's agreements with such parties or the provisions of the Contract Documents, whichever is more stringent.
- 14.1.7 Contractor fails to comply with any Current Laws.
- 14.1.8 Contractor fails to comply with any other material or substantial provision of the Contract Documents.

If a default continues uncured for seventy-two hours (or as otherwise agreed to by Owner in writing) after Owner gives notice of such default to Contractor, such failure to cure shall be deemed an **"Event of Default"** entitling Owner to exercise its remedies provided in Section 14.2 below. In addition, if Contractor becomes insolvent, makes an assignment for the benefit of creditors, or becomes the subject of a bankruptcy proceeding (unless the same is an involuntary proceeding against Contractor and is dismissed within forty-five (45) days after it has been commenced), the same shall also be an Event of Default.

14.2 Owner's Remedies.

- 14.2.1 Upon the occurrence of an Event of Default, Owner may, in addition to any other remedy which may be provided in the Contract Documents or which is otherwise available at law or in equity, terminate the engagement of Contractor made under the Contract and may (i) take possession of the Site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor; (ii) accept assignment of such subcontracts and contracts with Supplier as Owner may from time to time elect; and (iii) finish the Work by whatever reasonable method Owner may deem expedient. Any such act by Owner shall not be deemed a waiver of any right or remedy of Owner, and Owner shall have all rights and remedies available at law or in equity.
- 14.2.2 If after exercising any such remedy, the reasonable cost to Owner of the performance of the balance of the Work is in excess of that part of the Contract Sum that has not theretofore been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse Owner for such excess within thirty (30) days of its receipt from Owner of an invoice detailing such excess cost.
- 14.2.3 If Owner terminates the Contract as permitted by this Section 14.2, Contractor shall not be entitled to receive any further payment hereunder; provided that, if Owner is able to have the Project finished for less than the Contract Sum, Owner shall pay to Contractor the amount, if any, necessary to pay Subcontractors of Contractor for the Work they performed in a satisfactory manner prior to such termination, but only to the extent that such payment will not cause Owner to have expended, for all costs of the Project, an amount in excess of the Contract Sum.
- 14.2.4 The remedies provided to Owner pursuant to this Article shall be in addition to all other remedies of any kind and nature which Owner may have, either at law or in equity, for any breach hereof or failure to perform by Contractor, including the liquidated damages provided herein. All remedies of Owner shall be cumulative, and the exercise of one or more remedies by Owner hereunder shall not preclude the simultaneous exercise or subsequent exercise of other or additional remedies.

14.3 Default by Owner. Time is of the essence in Owner's performance of its obligations to Contractor hereunder. Owner shall be in default of its obligations under the Contract upon the occurrence of any of the following:

14.3.1 Failure to pay Contractor any Progress Payment when it is due (not including any payment or portion thereof to which Owner has timely made objection in the manner provided in the Contract Documents).

14.3.2 Failure to perform any other material obligation under the Contract Documents in the time permitted thereby.

Owner's failure to cure any such default within thirty (30) days after receiving written notice thereof from Contractor with respect to a non-monetary default (or so long thereafter as Owner is using commercially reasonable efforts to cure such default) or within fifteen (15) business days after receiving notice from Contractor of failure to make a Progress Payment (not including any payment or portion thereof to which Owner has timely made objection in the manner provided in the General Conditions of the Contract) shall be an Event of Default by Owner.

14.4 Contractor's Remedies. In the event that an Event of Default by Owner occurs and is then continuing, (i) Contractor may cease all or any portion of the Work, and Owner shall be responsible for all increased costs arising out of such delay, which delay shall be an Owner Delay, but only to the extent that the Work is actually delayed as is necessary to be an Owner Delay under Section 13.2 of the General Conditions of the Contract or (ii) in the alternative, Contractor may terminate the Contract, remove any materials, equipment, and tools from the Site, and recover from Owner payment for all Work executed and any loss or damage sustained by Contractor by reason of the termination; provided that in no event shall Contractor be entitled to recover from Owner more than the remainder obtained when the (a) sum of (i) the costs of completing the Work Contractor avoids by the termination plus (ii) the amounts already paid by Owner to Contractor hereunder are subtracted from (b) the Contract Sum.

14.5 Attorneys' Fees. In the event any dispute related to the Contract is made the subject of litigation, the party prevailing on the more substantial part of its claims and defenses in such litigation shall be entitled to recover its attorneys' fees and costs reasonably incurred in connection with such litigation.

14.6 Suspension by Owner for Convenience. Owner may, without cause, order Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as Owner may determine. An equitable adjustment by Agreed Change shall be made for increases in the Contract Sum, Required Substantial Completion Date and Required Final Completion Date on account of any such suspension, delay or interruption. If the suspension of the Work by Owner for convenience exceeds ninety (90) days, Contractor may terminate the Contract, and Owner shall pay Contractor in accordance with the provisions of Section 14.7. During any period of suspension, Contractor shall store all materials to prevent them from becoming damaged in any way or becoming an obstruction, and shall take all appropriate precautions to prevent damage to or deterioration of the Work, provide suitable drainage and erect temporary structures where necessary, provided that Contractor shall first notify the Owner and Architect of the measures the Contractor proposes to take and the anticipated costs thereof.

14.7 Termination by Owner Without Cause. For purposes hereof, "**Commencement of Construction**" shall be deemed to have occurred on the earliest of (i) date on which Contractor, with the consent of Owner, moves the first equipment onto the Site, (ii) the date on which Contractor, with the consent of Owner, makes an order for materials that cannot be canceled without payment of a cancellation fee, loss or deposit, or similar cost, or (iii) otherwise, with the consent of Owner, takes action to commence construction that cannot be terminated without cost.

14.7.1 Prior to Commencement of Construction. If the Agreement is a CMGC Agreement, Owner may at any time prior to Commencement of Construction, at will and without cause, terminate the Contract by notice to Contractor. In the event of such termination,

Contractor shall immediately stop the Pre-Construction Work, and, to the extent Owner has not already paid such amounts to Contractor, Owner shall pay Contractor the portion of the Pre-Construction Fee applicable to Pre-Construction Work already performed, including an equitable portion of the installment of the Pre-Construction Fee applicable to the then-current Design Phase based on the proportion of the Pre-Construction Work for that Design Phase (including consultations) that has been completed.

14.7.2 After Commencement of Construction.

14.7.2.1 Owner may, at any time on or after Commencement of Construction, at will and without cause, terminate all or any part of the Work and any subcontract or any contract with a Supplier pertaining to the same by giving written notice to Contractor specifying the part of the Work or subcontract or any contract with a supplier to be terminated and the effective date of the termination. In case of a termination of a portion of the Work, Owner will execute an Agreed Change making any required adjustment to the Required Substantial Completion Date, Required Final Completion Date and/or the Contract Sum necessitated by such termination. Contractor shall submit its claim for the amounts of such adjustments in writing within ten (10) days after the first to occur of the resumption of the Work or the termination of the Contract. For the remainder of the Work, if any, the Contract Documents shall remain in full force and effect. Contractor shall continue to prosecute the Work not terminated, if any.

14.7.2.2 If any part or all of the Work is so terminated or if Contractor terminates the Contract pursuant to Section 14.6, Contractor shall be entitled to payment for: (i) Work properly executed in accordance with the Contract Documents; (ii) the full amount of Soft Costs incurred through the date of termination; (iii) the portion of the Contractor Fee applicable to the portion of the Work completed; (iv) costs directly related to the termination of the Contract or to Work thereafter performed by Contractor in terminating such Work, including costs of demobilization; and (v) materials specially fabricated for the Work prior to the time when the Contractor gives or receives notice of such termination and not incorporated in the Work prior to termination.

14.7.2.3 If any materials specially fabricated for the Work are not fully prepared when the Contractor gives or receives notice of termination of the Agreement, Contractor shall, immediately upon giving or receiving such notice, (i) notify the applicable Suppliers to stop work and wait for further instructions, and (ii) notify Owner and Architect that such materials are partially fabricated and that the suppliers thereof are awaiting further instructions. The Owner shall, within ten (10) days from the date it receives Contractor's notice, notify Contractor whether to have the work on such materials or other items completed. Contractor shall cancel all orders for materials or other items which the Owner does not wish to have completed. Contractor shall make a settlement with each such material supplier reasonably satisfactory to Owner, the costs of which shall be reimbursed by the Owner.

14.7.2.4 Owner shall be entitled to purchase from the Contractor any of the materials and other items obtained by the Contractor for the Work, but not incorporated in the work prior to termination, for the cost thereof to the Contractor.

Article 15. CONCEALED CONDITIONS

15.1 Concealed Conditions.

- 15.1.1 In the event Contractor encounters subsurface or otherwise concealed physical conditions that differ materially from those conditions reasonably inferable from observations of the exposed surfaces of the Site and reports, surveys, assessments, record drawings and other information furnished by Owner or obtained by Contractor, Contractor shall provide Architect and Owner notice thereof within two (2) business days after first discovering the same and shall suspend those portions of the Work that conflict with such conditions until receipt of further directions from Owner.
- 15.1.2 Contractor and Owner shall inspect and evaluate such conditions, and Owner shall cause the Architect, if necessary, to prepare appropriate supplemental drawings or instructions to address or accommodate the conditions discovered.
- 15.1.3 Delay resulting from the suspension of Work pending the investigation of unforeseen concealed conditions shall be an Owner Delay, but only to the extent that the same causes actual delay in the critical path to complete the Work that satisfies all the requirements necessary to be an Owner Delay under Section 3.4.1 and all the requirements of Section 15.1.5 below.
- 15.1.4 If the actions necessary to address such conditions of the Site increase the Cost of Work or adversely impact the critical path to completion of the Work, Contractor may request that an Agreed Change or Change Directive be issued for changes in the Work reflected in the supplemental drawings or instructions prepared to address such conditions, subject to the provisions of Section 15.1.5 below.
- 15.1.5 **Costs.**
- 15.1.5.1 Notwithstanding anything to the contrary provided herein, Contractor shall not be entitled to any increase in the Contract Sum or extension of the Milestone Schedule, nor shall any Owner Delay be deemed to have occurred, on account of any condition of the Site that was indicated in or reasonably inferable from (i) observations of the exposed surfaces of the Site and reports, surveys, assessments, record drawings and other information furnished by Owner or obtained by Contractor, (ii) a thorough inspection of the Site prior to the commencement of the Work (regardless of whether such thorough inspection was actually conducted), or (iii) other information and documents furnished to Contractor by Owner or others.
- 15.1.5.2 If the Agreement is a GMGC Agreement, increases in the Cost of Work (and any associated Construction Fee and General Conditions fee, if applicable) in connection with any Agreed Change or Change Directive under Section 15.1.4 shall be charged to the Contingency, and an increase in the Guaranteed Maximum Price shall be allowed, if at all, only to the extent that such costs exceed the balance of the Contingency.
- 15.1.6 Any dispute as to whether Contractor is entitled to receive an increase in the Contract Sum or extension of the Milestone Schedule on account of concealed conditions of the Site shall be a Dispute and shall, at the request of either Contractor or Owner, be submitted to Dispute Resolution.

Article 16. HAZARDOUS SUBSTANCES

- 16.1 Hazardous Substances.** “Hazardous Substances” include any substance identified as a hazardous substance pursuant to any federal, state or local law or regulation regulating substances by reason of threats posed to public health and safety, including the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Substances Transportation Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, and the Asbestos Hazard Emergency Response Act, all as amended.
- 16.2 Existing Facilities – Hazardous Substances May Exist.** Contractor acknowledges that most existing structures owned or operated by Owner contain asbestos-containing materials, and the Site may also contain other Hazardous Substances. Contractor and any Subcontractors, Sub-subcontractors or other personnel who may come into contact with asbestos-containing materials shall review and become familiar with Owner’s plan under the Asbestos Hazard Emergency Response Act, currently titled the “Denver Public Schools General Asbestos Management Plan” and the AHERA Asbestos Management Plan and Hazardous Materials Information book for each existing facility comprising part of the Project, as each may be revised from time to time. All persons acting for Contractor under the Contract shall be responsible to perform the responsibilities of “Vendors” as defined in those Plans.
- 16.3 No Introduction of Hazardous Substances.** Contractor, its contractors, its Subcontractors, its Sub-subcontractors, its Suppliers, and their respective agents, representatives and employees shall not introduce or cause the introduction of Hazardous Substances to the Project. Except as provided below as to Ordinary Course Materials, in the event that Contractor, its contractors, its Subcontractors, its Suppliers, or their respective agents, representatives and employees introduce or cause the introduction of Hazardous Substances to the Project, Contractor shall pay for removal of all such substances and shall indemnify Owner and its successors as owners of the Property for all liability resulting from the introduction of such Hazardous Substances to the Project.
- 16.4 Suspected Hazardous Substances.** Contractor acknowledges that other Hazardous Substances may exist in building materials, soils, or equipment used on the Site. Contractor shall not be primarily responsible to identify Hazardous Substances existing on the Site; provided that Contractor shall be responsible to comply with all recommendations and requirements of environmental consultants furnished to Contractor in writing. Except as provided above and except for Ordinary Course Materials, if Contractor encounters what Contractor reasonably believes may be Hazardous Substances, Contractor shall immediately stop Work in the area affected and immediately report the condition to Architect and Owner in writing. If, in fact, the materials are Hazardous Substances, the Work in the affected area shall not thereafter be resumed, except by written agreement of Owner and Contractor, until the Hazardous Substances have been removed or rendered safe by Owner in accordance with all applicable laws at Owner’s expense, and Owner has provided reasonable evidence thereof to Contractor. The Work in the affected area shall be resumed in the absence of Hazardous Substances, when any Hazardous Substances have been rendered harmless, or when the conditions in the preceding sentence have been satisfied. Unless such materials were introduced to the Project by Contractor or its contractors, Subcontractors, Sub-subcontractors, Suppliers, or their respective agents, representatives and employees, Owner shall be responsible for all reasonable costs related to any testing, removal, encapsulation, or remediation of any such substances or materials, and any additional cost of the Work arising out of any delay in the Work caused thereby. Except as to such materials introduced to the Project by Contractor or its contractors, Subcontractors, Sub-subcontractors, Suppliers, or their respective agents, representatives and employees, any delays

arising out of such testing, removal, encapsulation, or remediation shall be an Owner Delay, but only to the extent that the same causes actual delay in the Work that satisfies all the requirements necessary to be an Owner Delay under Section 3.4.1; provided, however, that if the Agreement is a GMGC Agreement, any increases in the Cost of Work (and any associated Construction Fee and General Conditions fee, if applicable) in connection with any such Owner Delay shall be charged to the Contingency, and an increase in the Guaranteed Maximum Price shall be allowed, if at all, only to the extent that such amounts exceed the balance of the Contingency.

- 16.5 Ordinary Course Materials.** Nothing contained herein shall be deemed to preclude Contractor from using and bringing onto the Property materials and substances (which are otherwise Hazardous Substances) used in the ordinary course of commercial construction in quantities typically and safely used for such purposes (“**Ordinary Course Materials**”). Contractor shall use all Ordinary Course Materials in accordance with all Current Laws and shall make sure that none of the Ordinary Course Materials are released or otherwise permitted to contaminate the Property or render the Property contaminated. Contractor shall defend and indemnify Owner against any claim, cost, loss, or damage resulting from the use of the Ordinary Course Materials in connection with the Project or resulting from the introduction of Hazardous Substances onto the Property in a manner not specifically permitted hereby. In the event Contractor recognizes any improper handling or storage of Hazardous Substances on the Site, including Ordinary Course Materials, or observes circumstances which contractor actually knows may result in the release or discharge of Hazardous Substances, whether or not by someone for whose acts Contractor is responsible, Contractor shall immediately notify Owner thereof.

Article 17. ROYALTIES AND PATENTS

- 17.1 General Requirements.** Contractor shall pay all royalties and license fees, and such costs shall be part of the Cost of Work. Contractor shall, at its own cost and not as part of the Cost of Work, defend all suits or claims for infringement of any patent rights relating to equipment or materials incorporated in the Work and shall indemnify and save Owner harmless from loss on account thereof, except that Owner shall be responsible for all such loss when a particular design process or the product of a particular manufacturer or manufacturers is specified by Owner; provided that, if Contractor has been notified or otherwise has reason to know that the use of a required design, process, or product is an infringement of a patent, Contractor shall be responsible for such loss, at its own cost and not as part of the Cost of Work, unless such information is promptly furnished to Architect and Owner.

Article 18. DRAWINGS, DETAIL AND INSTRUCTIONS

- 18.1 Clarifications and Additional Instructions.** In the event Contractor observes that the Construction Documents contain ambiguities or omissions, or are inconsistent with existing conditions on the Site, Contractor shall promptly submit to Architect a written request for clarification or additional instructions. Contractor shall do no Construction Work without adequate drawings and instructions describing the Work in sufficient detail for the proper execution thereof.
- 18.2 Details Schedule.** If detail drawings or other instructions are to be prepared by Architect during the course of the Work, Contractor and Architect shall jointly prepare a schedule for the Architect to provide such Work Product, and Contractor shall incorporate such schedule into the Project Schedule.
- 18.3 Copies of Construction Documents.** Unless otherwise provided in the Contract Documents, Architect will furnish the Contractor with all copies of Construction Documents reasonably necessary for the execution of the Work.

- 18.4 Ownership of Work Product.** Contractor acknowledges that the Work Product and the copyright interest therein are owned either by Architect or by Owner, in accordance with the terms of the agreement between Architect and Owner. Contractor shall not be entitled to use the Work Product in connection with any construction other than the Project, and upon the completion of the Work or the termination of the Contract, Contractor shall return to Architect, at its request, all copies of the Work Product except one (1) signed record set of Construction Documents. Any models shall be the property of the Owner.

Article 19. ROLE OF THE ARCHITECT

- 19.1 Limited Agent.** Architect is the agent of the Owner only to the extent provided in the Contract Documents and Architect's agreement with Owner. When in special instances the Architect is authorized to act on Owner's behalf, the Architect shall, upon request, provide the Contractor copies of the documents that establish such authority.

19.2 Primary Interpreter of Construction Documents.

19.2.1 The Architect shall be the primary interpreter of the meaning and intent of the Construction Documents and shall be, in the first instance, the judge of the performance of the Contract. Architect will visit the site at appropriate intervals to become familiar with its progress and quality and to determine in general if the Work is being performed in such a manner that it will, when fully completed, be in accordance with the Contract Documents.

19.2.2 Architect shall, in a timely manner, evaluate and issue written determinations resolving any claims or disputes submitted to the Architect for review under the Contract. Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents. In exercising its authority to make such determinations, Architect shall exercise independent professional judgment based on the Contract Documents and shall not favor Contractor or Owner. All such determinations shall be subject to judicial review, provided, however, that any matters designated as Disputes under the Contract shall be submitted to Dispute Resolution in accordance with the Agreement before being made the subject of litigation unless the Agreement specifically provides otherwise.

- 19.3 Communications.** Contractor shall furnish both Owner and Architect copies of all notices Contractor gives to either Architect or Owner under the Contract relating to Applications for Payment, Change Directives, Proposed Changes, Change Orders, Progress Payments, or claims for adjustment in the Contract Sum, Required Substantial Completion Date or Required Final Completion Date. Such duplicate notice shall also be given as to other matters requested in writing by Owner or Architect.

Article 20. SUBMITTALS

- 20.1 Schedule of Submittals.** Within thirty (30) days after the date of this Contract, Contractor and Architect shall jointly prepare a schedule for submittals of shop drawings, samples, schedules and other submittals to be made by the Contractor, the review thereof by Architect, and responses and resubmittals by Contractor based on the Architect's review. Contractor shall incorporate such schedule into the Project Schedule.

- 20.2 Scope of Architect's Review.** Architect shall review Contractor's submittals of shop drawings, samples, schedules and other documents related to items to be incorporated in the Work for aesthetic effect. Contractor shall be responsible to ensure that such submittals conform to the

Contract Documents, and the approval of such submittals by Architect shall not relieve the Contractor from responsibility for any deviation of such submittals from the Contract Documents unless the Contractor gives the Architect specific written notice of such deviation together with such submittal, nor shall it relieve the Contractor from responsibility for errors and omissions contained in such submittals.

- 20.3 Review Process.** The review of Contractor's submittals shall be conducted in accordance with the provisions of the specifications contained in the Construction Documents. Such specifications will be based on the Standards.

Article 21. NOTICES

- 21.1 How Notice May Be Given.** All notices required or permitted to be given under the Contract shall be in writing and shall be delivered by (i) certified or registered mail, postage prepaid, return receipt requested, (ii) commercial courier, (iii) hand delivery, or (iv) successful and confirmed facsimile transmission. All such notices shall be delivered to the parties at the addresses provided in the Agreement or at such other address as Contractor, Owner or Architect may determine for itself by notice given to the other parties. Each notice shall be deemed effective when actually delivered to the address for the party or delivery at such address is tendered and refused or, if the party has multiple addresses, when either actually delivered to, or delivery is tendered and refused at, each of the addresses for the party. Notwithstanding anything to the contrary herein, meeting notes and minutes prepared by Contractor shall not constitute notice of any fact regarding which notice is permitted or required to be given under the Contract, regardless of how such notes and minutes are delivered.

Article 22. INDEPENDENT CONTRACTOR.

- 22.1 Status.** The parties intend that Contractor shall have the status of an independent contractor, and the Contract Documents shall not be construed to render Contractor or any employee, Subcontractor or Sub-subcontractor of Contractor, or any of their employees, officers or agents, an employee or partner of Owner.
- 22.2 Employee Benefits.** Neither Contractor nor any of its employees, officers, agents, Subcontractors, Sub-subcontractors, or other contractors or consultants shall be entitled to any employee benefits from the District, including, but not limited to, any employer withholding or liability for any of the following: taxes; FICA contributions; other Social Security, Medicare or Medicaid contributions or withholding; medical or disability insurance; vacation or leave; pension contributions; unemployment insurance or worker's compensation insurance (collectively, "**Employee Benefits**"). Contractor shall be responsible to pay all taxes due on account of any payments to Contractor by Owner under the Contract. Except to the extent, if any, that such a waiver and release may be expressly prohibited by applicable laws, Contractor waives and releases all claims against Owner for any Employee Benefits.

Article 23. NO WAIVER

- 23.1 No Waiver.** No inspection by the Architect or any other person acting on the Owner's behalf, nor any order, measurement, estimate or certificate by the Architect, nor any order by the Owner for the payment of money, nor any payment for or acceptance of any Work, nor any extension of time, nor any possession taken by the Owner, shall operate as a waiver of any right of Owner arising out of or related to the Contract. No waiver of any breach of the Contract shall be construed as a waiver of any other or subsequent breach thereof.

GENERAL CONDITIONS OF THE CONTRACT

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SCHOOL DISTRICT NO.1
IN THE CITY AND COUNTY OF DENVER
AND STATE OF COLORADO

PERFORMANCE AND PAYMENT BOND

Bond No. _____ (the "Bond")

KNOW ALL MEN BY THESE PRESENTS that _____

_____, as Principal (the "Principal"), and _____

_____, a corporation organized and existing under the laws of the State of _____, and authorized to transact business in the State of Colorado, as Surety (the "Surety"), jointly and severally, bind themselves, their heirs, personal representatives, successors, and assigns to the SCHOOL DISTRICT NO.1 IN THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO (the "Owner"), in the principal amount of _____ (\$ _____) as adjusted by approved change orders (not to exceed ten (10) percent of the principal amount of this Bond unless expressly approved by the Surety, which approval shall not be unreasonably withheld) and interest as provided by law (collectively referred to herein as the "Penal Sum"), for the performance of and payment of all amounts due under the agreement between the Principal and the Owner, dated _____, 20____, (the "Agreement") for the following project: _____ (the "Project"), together with the obligations of the Contract Documents, as defined in the Agreement, all of the documents are incorporated by this reference and shall be, collectively, referred to as, the "Contract".

The condition of this obligation is such that, if the Principal shall at all times duly, promptly, and properly perform all the terms and conditions of the Contract and any authorized modifications thereof during the original term of the Contract, any extensions thereof that may be granted by the Owner, and during the term of any guarantee or warranty required under the Contract; and promptly make payment of all amounts, claims, or demands lawfully due to all persons, firms, associations, or corporations supplying or furnishing to the Principal or its subcontractors labor or materials, supplies, or equipment which are used, provided, or performed in the prosecution of the work provided for in the Contract and any and all duly authorized modifications of the Contract that may hereafter be made, then the Principal and Surety shall have no obligation under this Bond, otherwise, it shall remain in full force and effect and the Surety shall pay the full value of all payment amounts, claims or demands lawfully due and shall indemnify and hold the Owner harmless from all payments which the Owner may be required to make under the Contract or applicable law in excess of the Contract price not exceeding the amount of this obligation, together with interest as provided by law, as well as attorneys' fees and costs incurred by the Owner in the resolution of any claim.

Whenever the Owner terminates the Contract in accordance with the terms thereof, the Surety shall, within fifteen (15) calendar days after written notice of such termination, notify the Owner in writing of its election to complete the Contract in accordance with its terms, or notify the Owner that the Surety elects not to complete the Contract. If the Surety fails to give the written notice so required within such time period, then it will be deemed to have elected not to complete the Contract. Should the Surety elect to complete the Contract, it shall, within fifteen (15) additional calendar days following the date of receipt of the written notice of such election and with the Owner's written approval, obtain a contractor to complete the work in accordance with the original Contract's terms and conditions and thereafter proceed to work with due diligence and as the work progresses make available sufficient funds to pay the cost of completion less the balance of the Contract price. The Surety may not engage the Principal to complete the Contract, without the prior written consent of the Owner, which consent may be withheld at the sole and absolute discretion of the Owner.

If the Surety elects to complete the Contract, then it shall be entitled to receive the balance of the Contract price, less (i) any amounts paid by the Owner to the Principal; (ii) costs incurred by the Owner in correcting any defective work; (iii) any additional legal, design professional, and other costs incurred by the Owner resulting from the Principal's default; and (iv) liquidated damages caused by delayed performance or nonperformance of the Principal. Any progress payments, less retainage, due but not paid at the date of termination shall be paid to Surety so long as the Surety has agreed to indemnify the Owner for the amount thereof and no other claims have been made to such funds by subcontractors or suppliers in accordance with the Contract or applicable law.

In the event the Surety elects not to complete the Contract, the Owner may then have the work completed by such means and in such manner, by contract with or without public bidding, or otherwise, as it may deem advisable. The Surety in such event shall at all times make available, sufficient funds, which at no time shall exceed the Penal Sum, as work progresses under the Contract between the Owner and its new contractor, and will pay the cost of the completion of the Contract pursuant to its terms, together with the other amounts set forth in sections (i) through (iv) above, but in no event shall the Surety be responsible for the payment of any sums to the Owner until the Owner has agreed to pay its total obligation according to the terms of the Contract, plus change orders, less deductions and claims chargeable by law or by the Contract, if any, and less the retainage which will be disbursed as proved by the Contract Documents and applicable law.

The procedures set forth herein shall apply should there be a default and termination or a succession of defaults and terminations in fulfilling the terms and conditions of the work under the Contract.

Any judgment recovered hereunder by the Owner shall include interest at the legal rate, together with reasonable attorneys' fees and costs.

IN WITNESS WHEREOF said Principal and Surety have executed this Bond, this
_____ day of _____ A.D., 20_____.

Principal:

(PRINCIPAL'S CORPORATE SEAL)

ATTEST:

By: _____ Date: _____
Print Name: _____
Title: _____

By: _____ Date: _____
Print Name: _____
Title: _____

Surety:

(SURETY'S CORPORATE SEAL)

By: _____ Date: _____
Print Name: _____
Attorney-in-fact

THIS BOND MUST BE ACCOMPANIED BY A POWER OF ATTORNEY

Best's Rating: _____
Best's Financial Rating: _____
Date: _____

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>OFF-SITE SERVICES AND STAFF</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Corporate Executives		X				
2	Principal in Charge		X				
3	Project Executive		X				
4	Legal (Basic Service)		X				
5	Project Manager			X			
6	Accounting		X				
7	Added Accounting for Lender		X				
8	Scheduling		X				
9	Special Lender Reporting		X				
10	Life-Cycle		X				
11	Energy Management		X				
12	Production Engineering		X				
13	Purchasing		X				
14	Value Engineering		X				
15	Systems Development		X				
16	Estimating		X				
17	Cost Engineers		X				
18	Project Coordinator		X				
19	Project Expediter		X				
20	Drafting Detailer						
21	Drawing Checker						
22	Safety Officer		X				
23	E.E.O. Officer		X				
24	Secretarial		X				
25	Clerk-Typist		X				
26	Fringe Benefits for Above		X	X			
27	Vacations for Above		X	X			
28	Bonuses for Above (If Any)		X	X			
29	Legal (Special Services Extras)						

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>ON-SITE SERVICES AND STAFF</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Project Manager (If Required)			X			
2	Project Superintendent			X			
3	General Superintendent (If Required)	X					
4	Mechanical Coordinator (If Required)		X				
5	Electrical Coordinator (If Required)		X				
6	Project Engineer (If Required)			X			
7	Office Engineer (If Required)		X				
8	Scheduling Engineer (If Required)		X				
9	Field Engineer (If Required)		X				
10	Draftsman/Detailer (If Required)		X				
11	Drawing Checker (If Required)		X				
12	Field Accountant (If Required)	X					
13	Time Keeper/Checker (If Required)		X				
14	Scheduling Engineer (If Required)		X				
15	Expediter (If Required)		X				
16	Secretary (If Required)		X				
17	Clerk-Typist (If Required)		X				
18	Rodman and Helpers (If Required)			X			
19	Safety Engineer (If Required)			X			
20	E.E.O. Officer (If Required)		X				
21	Independent Surveyor (If Required)						X
22	Personal Computer (If Required)			X			
23	Copy Machine (If Required)			X			
24	Fax Machine (If Required)			X			
25	Fringe Benefits		X	X			
26	Vacations for Above Staff		X	X			
27	Bonuses for Above (If Any)		X	X			
Phase: <u>TRAVEL AND LODGING</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Off-Site Staff Travel Cost		X				
2	Off-Site Staff Transportation		X				
3	On-Site Project Manager Transportation			X			
4	Superintendent's Transportation			X			
5	Engineer's Transportation	X					
6	Project Staff Moving Expense	X					
7	Project Staff Subsistence Costs	X					
8	Travel/Lodging Out of State	X					

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>TEMPORARY FACILITIES</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Safety Equipment			X			
2	First Aid Supplies			X			
3	Handrails and Toe Boards				X		
4	Opening Protection				X		
5	Fire Extinguishers			X			
6	Watchman Service			X			
7	Office or Trailer Rental			X			
8	Storage or Trailer Rental				X		
9	Waterboy - Ice - Cups			X			
10	Temporary Toilets			X			
11	Change/Shower Rooms	X					
12	Lunch Rooms	X					
13	Temporary Stairs				X		
14	Temporary Enclosures				X		
15	Fireproofing Enclosure				X		
16	Concrete Work Enclosure				X		
17	Masonry Work Enclosure				X		
18	Temporary Building Heating			X			
19	Project Signs			X			
20	Bulletin Boards			X			
21	Temporary Fencing				X		
22	Covered Walkways	X					
23	Barricades				X		
24	Safety Nets	X					
25	Ambulance Cost	X					
26	Security Guard			X			
27	Architect/Engineer Temporary Office	X					

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>ON-SITE UTILITIES AND SERVICES</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Telephone Installation			X			
2	Telephone Expense			X			
3	Temporary Power Service (If Required)				X		
4	Power Expense				X		
5	Temporary Water Service				X		
6	Temporary Heating Service				X		
7	Temporary Cooling Service	X					
8	Heating Energy Charges				X		
9	Cooling Energy Charges	X					
10	Temporary Wiring				X		
11	Lightbulbs				X		
12	Weekly Cleanup			X			
13	Final Cleanup				X		
14	Dump Permits and Fees			X			
15	Debris Hauling/Removal			X			
16	Flagman/Traffic Control				X		
17	Street/Walk Cleaning (If Required)				X		
18	Dust Controls				X		
19	Temporary Roads (If Required)				X		
20	Roadway Maintenance (If Required)				X		
21	Temporary Water Expense (If Required)				X		
22	Temporary Sewer Expense	X					
23	Two-way Radio Equipment			X			
24	Trash Chute and Hoppers				X		
25	Architect/Engineer Telephone Charges	X					

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>ON-SITE EQUIPMENT</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Automobile and Fuel			X			
2	Pickup Truck and Fuel			X			
3	Flatbed Truck and Fuel				X		
4	Water Truck and Fuel				X		
5	Air Compressor and Fuel				X		
6	Dewatering Equipment and Fuel				X		
7	Generator and Fuel				X		
8	Debris Removal/Hauling Equipment				X		
9	Snow Removal Equipment				X		
10	Tire and Maintenance Cost for Above			X			
11	Welder and Fuel				X		
12	Welding Equipment and Fuel				X		
13	Cutter Torches and Fuel				X		
14	Office Rentals or Cost			X			
15	Storage Rentals or Cost				X		
16	Small Tools Purchase			X			
17	Small Equipment Rental			X			
18	Office Furniture Rental			X			
19	Fax Machine and Supplies (If Required)			X			
20	Copy Machine and Supplies (If Required)			X			
21	Office Equipment and Supplies (If Required)			X			

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>VERTICAL HOISTING</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Hoist and Tower Rental				X		
2	Small Material Hoist Rental				X		
3	Hoist Landings and Fronts				X		
4	Hoist Operators				X		
5	Hoist Safety Inspections				X		
6	Hoist Materials Skips				X		
7	Hoist Material Hoppers				X		
8	Erect and Dismantle Hoists				X		
9	Fuel, Repairs and Maintenance				X		
10	Hoist Communication				X		
11	Crane Rental				X		
12	Crane Operators				X		
13	Crane Safety Inspections				X		
14	Erect and Dismantle Crane				X		
15	Fuel, Repairs, Maintenance				X		
16	Crane Raising/Jumping Cost				X		
17	Temporary Elevator Rental	X					
18	Elevator Operation Cost	X					
19	Elevator Repairs and Maintenance	X					
20	Cage Rider at Elevator	X					
21	Safety Inspections				X		
22	Forklift Rental				X		
23	Forklift Operators				X		
24	Forklift Safety Inspections				X		
25	Fuel, Repairs, Maintenance				X		
26	Elevator Service Costs	X					
27	Crane/Hoist Inspections				X		
28	Erection/Removal of Above				X		

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>TEMPORARY HEATING</u> (If Required)		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Remove Snow and Ice				X		
2	Partitions and Enclosures				X		
3	Piping Cost in Building				X		
4	Fuel Cost for Heating				X		
5	Power Cost for Heating				X		
6	Steam Purchase Cost	X					
7	Furnace Rental	X					
8	Heater Rental				X		
9	Boiler Rental	X					
10	Operator (Temporary System)	X					
11	Operator (Permanent System)	X					
12	Operation Fire Watch				X		
13	Cleaning Costs				X		
14	Maintenance Cost			X			
15	Warranty Cost		X				
16	Filter Change				X		
17	Temporary Office Heating	X					
18	Lunch Room Heating	X					
19	Change/Shower Room Heating	X					
20	Temporary Enclosures				X		
21	Temporary Partitions				X		
22	Temporary Exterior Enclosure				X		
23	Enclosure Moving/Maintenance				X		

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>REPRODUCTION AND PRINTING</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Cost Study Documents						X
2	Systems Study Documents						X
3	Bid Package Documents				X		
4	Bidding Instructions		X				
5	Construction Documents				X		
6	Postage and Express Costs			X			
7	As-Built Documents (Drafting)		X				
8	As-Built Documents (Printing)				X		
9	Accounting Forms		X				
10	Field Reporting Forms		X				
11	Contract Agreements		X				
12	Schedule Report Forms		X				
13	Estimating Forms		X				
14	Cost Reporting Forms		X				
15	Presentation Charts and Graphics		X				
16	Value Analysis Studies		X				
17	Data Processing (In House)		X				
18	Reference Materials		X				
19	Duplication Expense (Miscellaneous)			X			
20	Shop Drawing Printing			X			
21	Data Processing (Outside Services)	X					
22	Maintenance Manuals			X			
23	Operation Manuals			X			
24	Special Forms		X				
25	As-Built Record (Field)		X				
26	As-Built Master Drafting		X				

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>QUALITY CONTROL</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Chief Inspector						X
2	Field Inspector						X
3	Inspectors Office						X
4	Inspectors Transportation						X
5	Inspectors Equipment						X
6	Special Inspection Consultants						X
7	Special Testing Consultants						X
8	Concrete Testing						X
9	Masonry Testing						X
10	Compaction Testing						X
11	Welding Testing						X
12	Welding Inspections						X
13	Fireproofing Inspections						X
14	Soils Investigations						X
15	Special Testing Services						X
16	Supplies and Materials (Field Office)	X					
17	Project Photographs			X			
18	Warranty Inspections Coordination		X				
19	Air and Water Balancing				X		
20	Operator On-Site Training			X	X		
21	Prepare Operation Manuals			X			
22	Prepare Maintenance Manuals			X			

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>PERMITS AND SPECIAL FEES</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Storage Yard Rental	X					
2	Parking Lot Rentals	X					
3	Parking Fees	X					
4	Curb and Gutter Permits						X
5	Sign Permits						X
6	Staking Fees						X
7	Sidewalk Permits						X
8	Landscape Permits						X
9	Street/Curb Design Charge						X
10	Building Permits				X		
11	Plan Check Fees						X
12	Water Connection Fee						X
13	Sanitary Connection Fee						X
14	Storm Connection Fee						X
15	Gas Service Charge						X
16	Power Service Charge						X
17	Steam Service Charge	X					
18	Chiller Water Service Charge	X					
19	Special Tap Fees						X
20	Contractors Licenses		X				
21	Royalties	X					
22	Zoning Fees/Consultants						X
23	Use Fees						X
24	Construction Equipment Licenses		X				
25	Construction Equipment Permits		X				
26	Street Bonds/Permits				X		X
27	AGC/ABC Project Fees		X				

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>INSURANCES AND BONDS</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Builders Risk Insurance				X		
2	Errors and Omissions				X		
3	General Liability				X		
4	Product Liability	X					
5	Excess Liability Coverage				X		
6	Workmen's Compensation			X			
7	FICA Insurance			X			
8	Federal Unemployment			X			
9	State Unemployment			X			
10	Payment Bond				X		
11	Performance Bond				X		
12	Street/Property Bonds				X		
13	State/Local Bonds				X		
14	Contractors Bonds				X		
15	Warrantee Bond Costs	X					
16	Subcontractor Bonds:				X		
	Note: The school district will only allow a maximum of 2 subcontractors to be bonded for which the district will pay for the bonds.						
17	Off-site Staff Insurance		X				
18	Off-site Staff Taxes		X				

Exhibit B-1							
DENVER PUBLIC SCHOOLS							
CONSTRUCTION MANAGER/GENERAL CONTRACTOR AGREEMENT							
METHOD OF PAYMENT MATRIX							
Phase: <u>OTHER COSTS</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Project Taxes (On Construction Work)				X		
2	Construction Equipment				X		
3	Construction Services			X			
4	Construction Materials				X		
5	Cost of Design and Engineering				X		
6	A/E Cost for Bid Packages	X					
7	A/E Fast Track Cost Extras	X					
8	Preliminary Soils Investigations						X
9	Title/Development Cost						X
10	Land Costs						X
11	Financing/Interest Cost						X
12	Interim Financing Costs						X
13	Owner Change Contingency						X
14	Building Operation after Move-In						X
15	Building Maintenance after Move-In						X
16	Moving Coordination						X
17	Moving Costs						X
18	Corrective Work Extra		X				
19	Costs of Emergency Work						X
20	CMGC Overhead Cost		X				
21	CMGC Profit Margin		X				
22	GMP Financial Responsibility						X
23	Late Payment Interest						X
24	Environmental Impact Studies						X
Phase: <u>ADDITIONAL SERVICES</u>		Not Required	Contractor Fee	General Conditions	Direct Hard Costs	Soft Costs	Owner Expense
1	Services Not Listed Previously						
2							