**COLORADO MOUNTAIN COLLEGE**

**STANDARD CONSTRUCTION CONTRACT AND AGREEMENT**

This STANDARD CONSTRUCTION CONTRACT AND AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_\_\_, 2021 by and between COLORADO MOUNTAIN COLLEGE, a local college district (hereinafter, the “College”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, the “Contractor”).

**RECITALS**

WHEREAS, the College has determined a need to complete \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Project”), which Project is described in more detail in the “Contract Documents” listed in Section 1.01 below; and

WHEREAS, Contractor is qualified and able to complete the Project on behalf of the College according to the standards set forth by the College; and

WHEREAS, the College desires that the Contractor make available his services as specified in this document, in support of the College’s efforts to complete the Project, in those areas in which the Contractor has special qualifications; and

WHEREAS, authority exists in the law, and funds have been budgeted, appropriated and otherwise made available by the College, and a sufficient unencumbered balance thereof remains available for payment to complete the Project; and

WHEREAS, the Contractor is willing and able to provide said services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the premises herein and the following mutual covenants and agreements, the parties hereto agree as follows:

**AGREEMENT**

1. **Work to be Performed**
   1. Contract Documents. The “Contract Documents” for the Project consist of (a) this Agreement and any Exhibits attached hereto, (b) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (c) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (d) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (d) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and (e) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Contractor is in receipt of all above listed documents which are hereby incorporated by reference to this Agreement.
   2. Obligation to Complete Work. The Contractor shall supply and furnish at the site all labor, materials, tools, scaffolding, apparatus, supplies, equipment, machinery, transportation, supervision, insurance, taxes and technical, professional and other services to perform under this Agreement and it shall perform all operations necessary and required for the completion of the Project as described in the Contract Documents in a good, substantial, thorough, safe and workmanlike manner subject to the approval of the College (all of which shall be called the “Work”). The Contract Documents are to be construed together so that all of the Work as indicated anywhere therein relating to the Contractor’s Work is to be done by the Contractor. The Contractor agrees that where no explicit quality of standard for materials or workmanship are established for the Work, the Contractor will perform the work in strict accordance with the highest quality or standards applicable for the intended use, subject to the approval and acceptance of the College. The Contractor, by execution of the Agreement, acknowledges that it has fully examined the Contract Documents and the site and has had all questions answered to his satisfaction by the College and/or the architect/engineer on the Project.
2. **Contract Sum and Payments**
   1. Contract Sum. The College agrees to pay the Contractor for the Project the “Contract Price” in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, subject to additions and deductions for modifications as may be agreed upon, in writing, as provided in Article 5 below.
   2. Progress Payments. Based upon applications for payment submitted to the College by the Contractor, the College shall make progress payments to the Contractor as provided below:
      1. On or before the 10th day of each month, the Contractor shall submit to the College applications for progress payments in writing, which shall state the estimated percentage of the Work that has been satisfactorily completed as of such date. Upon receipt by such date and approval by the College of the progress payment amount as provided herein, the College shall make payment to the Contractor not later than the 10th day of the following month.
      2. Applications not received by the 10th day of the month will be held for processing at the end of the following period.
      3. The Contractor shall, upon return of this Agreement and before the first application, submit to the College a schedule of values of the various parts of the Work aggregating the total sum of the Contract Sum under this Agreement, made out in such detail as the Contractor and the College may agree upon, and supported by such evidence as to its correctness as the College may direct (the “Schedule of Values”). This Schedule of Values, when approved by the College, shall be used as a basis for applications for progress payments, unless it is found to be substantially unbalanced or in error. In applying for payment, the Contractor shall submit a statement based upon the Schedule of Values.
      4. Subject to other provisions of this Agreement, the amount of each progress payment shall be computed as follows:
         1. Upon receipt of an application for progress payment, the College shall determine that portion of the Contract Sum properly allocable to the completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of five percent (5%);
         2. The College shall add to the above product that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, less retainage of five percent (5%);
         3. The College shall then subtract the aggregate of previous payments made by the College.
      5. No progress payment to the Contractor shall operate as approval or acceptance of the Work of the Contractor. An “Interim Lien Waiver and Release” form must be completed and submitted by the Contractor for the total amount received to date, signed, notarized and presented to the College before each subsequent progress payment application will be processed.
   3. Final Payment.
      1. Final payment shall be made by the College to the Contractor no more than 30 days from the date:
         1. The Work is fully completed and performed in accordance with the Contract Documents and has been determined by the College to be satisfactory; and
         2. The Contractor has (a) submitted all required lien waivers, as-built drawings, sales tax affidavits, operations and maintenance manuals, (b) paid all payrolls and bills for materials and equipment, and (c) all known indebtedness connected with the Contractor’s Work have been satisfied. At the request of the College and at any time following the effective date of this Agreement, Contractor shall furnish a list of contact names, phone numbers and addresses of Subcontractors and material suppliers for the Project.
      2. Acceptance of final payment shall constitute a waiver of claims by Contractor. Acceptance of Work or making of said final payment shall not relieve the Contractor of liability for defects in said Work that may thereafter be discovered.
      3. Contractor acknowledges that payment under this Agreement may be made by check jointly to the Contractor and his suppliers, subcontractors, workmen or creditors having a right to lien against the Work.
   4. Withholding of Payment. The College reserves the right to withhold from any payment hereunder amounts claimed against the Contractor or the College relating to obligations arising out of completion of the Contractor’s work, until the Contractor shall furnish to the College evidence of payment of such obligations. The College further reserves the right to withhold payments hereunder on account of the failure of the Contractor to (a) correct defective workmanship or materials; (b) cure any default of the Contractor under any terms of the Agreement; or (c) pay, satisfy or discharge any claim of the College or any other person against the Contractor arising out of or in any way connected with the Work hereunder. If any of the foregoing deficiencies are not promptly corrected or removed after written notice, the College may rectify the same at the Contractor’s expense and deduct all costs and expenses incurred thereby from such withheld payments. If the withheld payments are insufficient to satisfy the said costs and expenses incurred by the College, or if any claim against the Contractor shall be discharged by the College after Final Payment is made, the Contractor and its surety or sureties, if any, shall promptly reimburse the College for all such costs and expenses incurred thereby, including any legal fees and court costs.
3. **Time of Commencement and Completion**
   1. Date of Commencement. The Contractor shall commence the Project upon execution of this Agreement; provided that in the event the College delivers written notice to the Contractor of a revised date of commencement of the Project no less than five (5) business days prior to the earlier of the date of commencement set forth herein or the revised date of commencement, and the Contractor does not object to such revised date of commencement within 2 business days of receipt thereof, the date of commencement shall be revised as set forth in the notice.
   2. Date of Completion. The date of completion of the Project shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Date of Completion”); provided that in the event of a change in the date of commencement as provided above, the Date of Completion shall be adjusted by the same number of business days (earlier or later) as the date of commencement. All punch list items must be complete by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Completion does not occur until construction passes all inspections and requirements by the owner, architect, and state.
   3. Delays. The time limits stated herein are the essence of the Agreement. By executing the Agreement, the Contractor confirms that the Date of Completion provides for a reasonable time for performing the Work. If the Contractor is delayed at any time in the commencement or progress of the Work by an act or failure to act of the College or of a separate contractor employed by the College, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor’s control, then Contractor shall notify College immediately and, upon review and approval by the College, which approval shall not be unreasonably withheld, the Date of Completion shall be extended by Change Order for such reasonable time as the College may determine.
4. **Contractor’s Responsibilities**
   1. Review of Contract Documents and Field Conditions. Prior to starting each portion of the Work, the Contractor shall carefully review the applicable Contract Documents, take all applicable field measurements, and otherwise observe any conditions at the site affecting such portion of the work. Any errors, omissions or inconsistencies in the Contract Documents discovered by Contractor shall be reported promptly to the Architect and College in the form of a written Request for Information (RFI). If the Contractor believes that additional cost or time is involved as a result of instructions issued by the College in response to such discovery and notification, Contractor shall inform the College of such additional time or cost by processing a Change Order as contemplated by Article 5 below.
   2. Supervision and Construction Procedures. The Contractor, using its best skill and attention, shall be solely responsible for all Work under this Agreement, including the techniques, sequences, procedures and means for coordination of all Work. If the Contract Documents give specific instructions concerning such Work, the Contractor shall evaluate the jobsite safety thereof and promptly notify the College in writing if it deems the techniques, sequences, procedures or means set forth in such instructions to be unsafe. Unless Contractor delivers such notification to the College, Contractor shall be fully responsible for all jobsite safety issues related to the Work. If the Contractor does so notify the College of any safety issues, the Contractor shall not proceed with the affected portion of the Work without further written instructions from the College.
   3. Progress of the Work. The Contractor shall furnish to the College an itemized breakdown of the Contractor’s Work operations together with duration time for each in order to meet the schedule set forth in Section 3.01 above. The Contractor shall cooperate with the College in working out the proper sequence of operations between the Work of the Contractor and that of other trades on the site, if any. The Contractor’s schedule for the Work, when approved by the College, shall determine the time and sequence of performance by the Contractor.
   4. Record Sets. Contractor shall maintain at the Project site, on a current basis, records of all necessary contracts, shop drawings, samples, purchases, materials, equipment, operations/maintenance manuals and instructions, and any other documents and revisions thereto which arise out of the Agreement, the Project or the Work. Contractor shall obtain data from Subcontractors, maintain a current set of record drawings, specifications, operating manuals, warranties and guarantees and, at completion of Project, provide all such documentation to Architect for review and acceptance.
   5. Reports and Project Site Documents. Contractor shall record the daily progress of the Project in a daily log available to the College and the Architect. Upon request, Contractor shall submit on a weekly basis written progress reports and summaries of meetings to the College and Architect, including information concerning Subcontractor’s work and percentage of completion.
   6. Labor and Materials. Except as otherwise provided in the Contract Documents, Contractor shall provide and pay for all labor, materials and equipment, including tools, construction equipment and machinery, necessary for the proper completion of the Project in accordance with the Contract Documents.
   7. Permits and Building Codes. Contractor shall secure and pay for all building permits and other permits, fees, licenses and inspections necessary for proper execution and completion of the Work. Contractor shall comply with all laws and ordinances, rules, regulations and lawful orders of public authorities relating to the performance of the Work and completion of the Project. If the Contractor performs Work knowing it to be contrary to such laws, ordinances, rules, regulations and orders without written notice to the College, the Contractor shall assume appropriate responsibility for such violation, correct the Work, if required, and bear all costs attributable to such violation and correction.
   8. Indemnification and Insurance.
      1. Contractor shall indemnify, defend and hold harmless College from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.
      2. Contractor shall purchase and maintain at all times during the performance of this Agreement the types of insurance with minimum limits of liability as stated in Exhibit B attached hereto and incorporated by reference.
      3. Contractor understands that College is a governmental entity and that the project is subject to applicable provisions of Colorado law and statutes including bid requirements, retainage, bonding, and final settlement provisions of C.R.S. 38-26-101, et seq. This Agreement and all subcontracts for work shall be subject to those provisions required of political subdivisions by the laws of the State of Colorado. Surety in the form of either a Performance and Payment Bond or a Letter of Credit is required. The Contractor shall deliver the required form of surety to College no later than three (3) business days following the date of the Agreement, or if the Work is to be commenced prior to the date of the Agreement, in response to a letter of intent. The Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such surety will be furnished.
   9. Representations and Warranties. The Contractor represents and warrants the following to the College (in addition to any other representation and warranties contained in the Agreement) as a material inducement to the College to execute the Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and final completion of the Work:
      1. The Contractor warrants to the College that the materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Contractor’s Work will be free from defects and in conformance with the requirements of the Contract Documents. If required by the College, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Project by the Contractor. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
      2. The Contractor warrants and guarantees that all of the Work performed under this Agreement shall be in accordance with the Contract Documents and shall be free of latent defects. The Contractor shall, at its own expense, correct any defect in materials or workmanship and any damage to the Work resulting therefrom for the longer of one (1) year or such period of time as required by the Contract Documents.
      3. Together, the College, Contractor and Architect shall perform a warranty inspection 11 months following the Date of Completion and produce a dated and written inspection report. Contractor shall immediately initiate, and promptly and satisfactorily complete any remedial work as may be necessary to correct any deficiencies or defective Work set forth in the inspection report College to Contractor.
      4. The Contractor is financially solvent, capable of obtaining adequate insurance, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder.
      5. The Contractor is able to furnish the physical infrastructure, tools, materials, supplies, equipment and supervision, and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so.
      6. The Contractor is authorized to do business in the locations specified for performance of the Work, and the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the project.
      7. The Contractor's execution of this Agreement and performance thereof is within the Contractor's duly-authorized powers.
      8. The Contractor's duly-authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the Contract Documents.
      9. The Contractor possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of this size, complexity and nature of this particular project and will perform the Work with the care, skill and diligence of such a contractor.
      10. No gratuities, kickbacks or contingency fees were paid in connection with the Agreement, nor were any fees, commissions, gifts or other considerations made contingent upon the award of the Agreement. Contractor warrants that to the best of Contractor's knowledge, there exists no actual or potential conflict of interest between Contractor and the College.

The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations, and performance hereunder. The Contractor acknowledges that the College is relying upon the Contractor's skill and experience in connection with the proper, timely and diligent prosecution of the Work.

* 1. Clean-Up. The Contractor agrees to keep the Project premises and adjoining areas free of waste material and rubbish caused by its Work, including the work of any subcontractors. Contractor further agrees to remove all such waste material and rubbish on termination of the Project, together with all its tools, equipment, machinery and surplus materials.
  2. Final Inspection. Within a reasonable time after final completion of Work and before final acceptance thereof, a final inspection shall be made by the Architect with the assistance of the College to determine whether the Work has been completed in accordance with the Contract Documents. A written report of inspection and detailed “punch list,” certified as to the contents and date of inspection, shall be completed and signed by the College, Contractor and Architect. The College may retain from payment to Contractor, an amount equal to two (2) times the Architect’s estimated cost of completing any unfinished items. Thereafter, in accordance with Article 2.02, the College shall pay to Contractor the amount retained for incomplete items for items successfully completed.
  3. Final Completion. Contractors shall determine final completion of the Work and provide written notice to the College and Architect that the Work is ready for final inspection and shall secure and transmit to the Architect required guarantees, certificates, lien releases, bonds and waivers. Contractor shall also turn over to College all required keys and maintenance stocks.
  4. College’s Right to Complete. If Contractor fails to promptly correct all defects shown by the inspection report, the College may do corrections after having given the Contractor 10 days prior notice of intention to do so. The College shall be entitled to collect from Contractor all costs and expenses, including reasonable attorney’s fees and court costs, incurred in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects. Additionally, the College, as its option, may choose to deduct or withhold such costs, expenses and damages from amounts otherwise owed to Contractor or may call upon any surety securing Contractor’s obligations. Guarantees and warranties of the Contractor provided for herein are in addition to and not in lieu of any other remedies available to College.
  5. Installation of College’s Furnishings, Fixtures and Equipment (“FFE”). Concurrent with Contractor’s performance of the Work, Contractor shall fully cooperate with College in order to schedule and facilitate the installation of College’s FFE by the College or College’s vendors, installers, contractors and consultants.
  6. Non-Discrimination. Contractor shall not discriminate against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, or privileges of employment or any other matter directly or indirectly related to employment because of race, color, religion, national origin, sex, ancestry, sexual orientation or genetic information.

1. **Change Orders**
   1. Written Order Required.
      1. The College reserves the right, at any time whatsoever, whether the Work or any part thereof shall or shall not have been completed, to make changes, additions and/or deletions in the Work as the College may deem necessary upon written order (“Change Order” or “Field Directive”) to the Contractor. The Contractor acknowledges and agrees that it shall make no claim for extra or additional compensation on account of any such work, unless same shall have been done pursuant to a written order, signed by Sean Nesbitt, the authorized representative(s) of the College having the authority to order such extra Work.
      2. In the event the College directs the Contractor to perform any item of Work, which the Contractor claims involves extra or additional Work that has not been authorized by a Change Order or Field Directive, the Contractor shall, within three (3) days after receipt of such direction, and before proceeding therewith, make a written claim to the College, giving in detail the basis of its contention that the Work is extra or additional, together with a detailed breakdown showing separately the additional cost of each item of labor and material. The Contractor shall then proceed with this Work. A failure to make written notice of claim within the time specified, and in the manner as herein provided, shall constitute a waiver of such claim and no recovery may be had by the Contractor on account of such work. The failure of the Contractor to perform the Work immediately after giving written notice of its claim, or on the fourth day subsequent to being directed to perform this Work, whichever is less, shall constitute a material breach of this Agreement, regardless of the legitimacy of the Contractor’s contentions, as it is specifically understood and agreed that the progress of the Work may not be delayed by reason of any controversy between the parties.
      3. No change order will be permitted which materially adversely affects the value of the project or its intended use.
   2. Calculation of Change Order Amounts. The amount to be paid to the Contractor on account of any extra, changed, added or omitted Work approved by a Change Order or Field Directive shall be:
      1. An agreed upon lump sum price as set forth in such Change Order or Field Directive; or
      2. Unit prices stated in the Contract Documents or subsequently agreed upon; or
      3. Costs to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or, in the event the parties hereto do not agree on one of the three preceding pricing methods;
      4. A time and materials basis computed as a sum of the following:
         1. Costs of labor, materials, supplies and equipment, including costs of transportation, whether incorporated or consumed (the “Costs of Work”);
         2. Costs of wage benefits, taxes and insurance directly attributable to the
         3. Rental costs of machinery and equipment, exclusive of hand tools;
         4. Additional costs of overhead and profit, in the amount of ten (10) percent and five (5) percent, respectively, of the Costs of Work. The overhead costs of ten (10) percent shall be in lieu of all administration, clerical expenses, supervisions, or superintendent of any nature whatsoever, including foremen.
   3. The Owner is a tax-exempt political subdivision of the State of Colorado. Accordingly, no sales or use taxes apply to material or labor incorporated in the project and no taxes shall be included in the price/compensation.
2. **Claims and Disputes**
   1. Fees and Costs to Prevailing Party. In the event of the bringing of any action or suit by one party hereunder against the other by reason of any breach of any of the provisions of this Agreement or the Contract Documents, the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the action or suit, including reasonable attorneys’ fees and costs incurred by such party in connection therewith.
3. **Termination**
   1. Termination by the Contractor.
      1. The Contractor may terminate this Agreement if the Work is stopped for a period of at least thirty (30) consecutive days through no act or fault of the Contractor or its subcontractors, agents or employees or any other persons performing portions of the Contractors work under this Agreement, for any of the following reasons:
         1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
         2. An act of government, such as a declaration of national emergency, making materials unavailable; and
         3. Except as otherwise provided herein, because the College has not made a progress or other payment to the Contractor by the due date as stated above.
      2. If one of the above reasons exists, the Contractor may, upon seven days written notice to the College, terminate the Agreement and recover from the College payment for Work executed.
   2. Termination by the College.
      1. The College may terminate this Agreement if the Contractor:
         1. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
         2. Fails to make payments to its subcontractors for materials or labor in accordance with the respective agreements between the Contractor and its subcontractors;
         3. Disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction over the Project; or
         4. Otherwise is guilty of substantial breach of a provision of this Agreement.
      2. When any of the above reasons exist, the College, after seven (7) days written notice, may terminate this Agreement, take possession of the Contractor’s Work on the Project and of all the materials on the site, and may finish the Contractor’s Work by whatever reasonable method the College may deem expedient.
      3. If the College terminates this Agreement for one of the reasons stated above, the Contractor shall not be entitled to receive further payment until the Project is finished.
      4. If the unpaid balance due the Contractor exceeds the reasonable costs of finishing the Work, the excess shall be paid to the Contractor. If the reasonable costs of finishing the Work exceed the unpaid balance due to the Contractor, the Contractor shall pay the difference to the College. The reasonable costs of finishing the Work shall be documented in an acceptable manner, and the obligation to pay the remaining amount to the Contractor or the College, as the case may be, shall survive termination of the Agreement.
4. **Miscellaneous Provisions**
   1. Independent Contractor. It is expressly understood and agreed that the Contractor is an independent contractor performing the services under this Agreement as an independent contract, and that the Contractor is not a College employee in his/her performance of this Agreement. It is further expressly understood and agreed that as an independent contractor, the independent contractor, nor any of its employees, is not entitled to any benefits, including workers’ compensation benefits and the Contractor is obligated to pay federal and state income tax, social security and other employment taxes on any monies earned pursuant to the contract relationship. The College will not deduct such taxes from any payment to Contractor hereunder. The Contractor is not subject to the College’s control as to the means and methods of accomplishing the work to be performed hereunder but the College may specify and control the result to be accomplished including any specifications, standards, requirements and deliverables. The College shall be permitted to retain other contractors performing the same or similar tasks, and Contractor shall be permitted to provide services to other parties. The Contractor represents and warrants that he/she has not previously been or is not currently an employee of the College either as a temporary or permanent employee. Contractor shall not have the authority to enter into any contract or agreement to bind the College and shall not represent to anyone that Contractor has such authority.
   2. Immunity Preserved. College is a Colorado local college district operating under and by virtue of the laws of the State of Colorado. The parties hereto understand and agree that College's liability for claims and injuries to persons and property is controlled by and limited by the Colorado Governmental Immunity Act. No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq. Any liability of the Owner shall not exceed and shall be strictly limited by the limits and other applicable provisions of the Colorado Governmental Immunity Act.
   3. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below, or sent by electronic facsimile to the telefacsimile numbers set forth below. All such notices or other communications shall be deemed received upon the earlier of (i) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice; (ii) if mailed as provided above, on the date of receipt or rejection; or (iii) if given by electronic facsimile, when received by the other party if received Monday through Friday between 9:00 a.m. and 5:00 p.m. so long as such day is not a state or federal holiday. If received after 5:00 p.m., or on a Saturday, Sunday or holiday, then such notice shall be effective on the following business day.

To the College: Colorado Mountain College  
802 Grand Ave.

Glenwood Springs, CO 81601  
Attn: Director of Purchasing & Contracts  
Telephone: 970-947-8402

To the Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
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* 1. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.
  2. Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.
  3. Time of Essence. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.
  4. Construction. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. This Agreement has been reviewed by counsel for both the College and the Contractor, and no presumption shall apply that ambiguities shall be construed against the draftsman. Unless otherwise indicated, all references to sections and subsections are to this Agreement. All exhibits referred to in this Agreement, including the Contract Documents, are incorporated by this reference.
  5. Open Book Requirement. Contractor shall keep full and detailed accounts and exercise such controls as necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to College. For the purposes of making audit, examination, transcriptions and excerpts, the College and designated representatives of the College shall be afforded access, at no additional cost or charge, to Contractor’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and any other data relating to this Agreement, and Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Contractor understands that certain information, including this Agreement, are public records available for public inspection and copying under the Colorado Public Records Act., C.R.S. 24-72-201, et seq. and other applicable laws.
  6. Entire Agreement. This Agreement is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by both parties. In the event of a conflict between this Agreement and the Contract Documents, the terms of this Agreement shall control.
  7. Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of Colorado. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth hereinabove.

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| COLLEGE  COLORADO MOUNTAIN COLLEGE  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | CONTRACTOR  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |