

CONSTRUCTION AGREEMENT

(Short Form – Projects with a Project Value Less Than \$50,000)

THIS CONSTRUCTION AGREEMENT (“Agreement”), is made and entered into this [DAY] day of [MONTH] 202[X], by and between Poudre School District R-1, hereinafter the "Owner," and [NAME] (hereinafter the "Contractor"), in connection with the [DESCRIPTION OF THE WORK], complete with all work appurtenant thereto (the “Project”).

In consideration of the compensation to be paid to the Contractor and of the mutual agreements herein contained, the parties agree as follows:

1.0 Scope of the Work

The Contractor shall perform all work required for the Project as described in the Contract Documents (the “Work”).

2.0 The Contract Documents

The Contract Documents that comprise the entire agreement between the Owner and the Contractor consist of the following:

- 2.1 This Agreement.
- 2.2 Exhibits to this Agreement, including Request for Proposal, Contractor’s [DATE] Proposal, Notice of Award, and Notice to Proceed.
- 2.3 Performance Bond and Labor and Materials Payment Bond as required by the Owner.
- 2.4 Any modification agreed to by both parties after execution of this Agreement.

The intent of the Contract Documents is to include all items and services necessary for the proper execution and completion of the Work. In the event of any inconsistency in the terms of the Contract Documents, the priority of interpretation shall be first, the terms and provisions of this Agreement, as may be modified by agreement of the parties, and second the exhibits to this Agreement, including Contractor’s [DATE] Proposal.

3.0 Term and Time of Completion

Subject to earlier termination by the Owner as provided in Section 19.0 below, the term of this Agreement shall commence on [DATE], 202[X], and continue through completion, which shall occur no later than [DATE], 202[X] (the “Completion Date”).

4.0 Liquidated Damages

The Contractor understands and agrees that the completion of the Project within the time provided is an essential feature of this Agreement and that the Owner will sustain substantial

damages, the amount of which is not possible to accurately determine at this time, if the work is not so completed. The Contractor, therefore, shall proceed with due diligence, taking all precautions and making all necessary arrangements to ensure the completion of the Work within the prescribed time. The Contractor further agrees that his failure to finally and fully complete the Work within the time allowed shall be considered a material breach of the Agreement and entitle the Owner to collect liquidated damages for the delay in completion by the Completion Date specified in Section 3.0 in the sum of \$100 DOLLARS (\$100.00) per calendar day until the Work is complete.

5.0 Contract Price

5.1 Contract Price. The Owner shall pay to the Contractor for performance of the Work encompassed by this Agreement, and the Contractor will accept as full compensation therefor the lump sum of [LONG HAND SUM] DOLLARS (\$[X]00), to be paid by progress payments in cash or its equivalent in the manner set forth below. Unless otherwise expressly stated, all Work, including but not limited to all equipment, materials, supplies, labor, bonds and insurance shall be included in the Contract Price and no claims for extra costs or change orders shall be allowed unless approved in writing in advance by the Owner.

5.2 Payment Terms. The Owner will establish billing procedures and pay the Contractor as provided herein based on the submission of statements on forms and in a manner prescribed by the Owner. The Owner reserves the right to modify the payment schedule in the event the Project and deliverables are not proceeding to completion in the manner proposed such that the payments coincide with the percentage of total Work performed during any payment period.

6.0 Acceptance and Final Payment

Upon satisfactory completion and final acceptance of the Work by the Owner, payment will be made in full, including, if applicable, retained percentages thereon less deductions as determined by the Owner and any other retention required by the Colorado public works laws. Upon submission of the final application for payment, to the extent applicable, the time of final settlement for the Work shall be set and shall be advertised by two (2) publications of notice of final payment, the last publication appearing at least ten (10) days prior to the time of final settlement. Final payment and settlement in full shall be made at the time of final settlement thus advertised, or as soon thereafter as practicable, in the judgment of the Owner, after resolution of claims and back charges. Notwithstanding the foregoing, if any unpaid claim for labor, materials, supplies or equipment is filed with the Owner before payment in full of all sums due the Contractor on the final settlement date, the Owner shall withhold from the Contractor sufficient funds, if available, to ensure the payment of such claim, until the same is paid or withdrawn. The making and acceptance of final payment shall not constitute a waiver of any claims by the Owner, including, among others, those arising from unpaid claims, from faulty Work that appears before or after final payment or from any failure to comply with any requirements of the Agreement. The Owner shall not authorize final payment until all the items on the final punch list are complete.

7.0 Contractor's Representations

7.1 The Contractor shall perform all of the Work set forth herein and shall not extend the credit or faith of the Owner to any other person or organizations.

7.2 The Contractor represents that it understands the nature, location, and scope of the Work, the character of the equipment and facilities needed preliminary to and during the performance of the Work, and the general and local conditions and all other matters that can in any way affect the Work and is not relying on any representations or promises by the Owner except as set forth in this Agreement.

7.3 The Contractor shall cooperate with other Contractors, if any, and employees of the Owner in performing the Work.

8.0 Contractor's Warranties

8.1 The Contractor warrants that the Work shall be conducted in a good and workmanlike manner and shall be suitable and fit for the purposes for which it is intended.

8.2 The Contractor warrants and represents that it has full authority under applicable law to execute and deliver this Agreement and to perform all of the obligations under this Agreement.

8.3 The Contractor represents that it shall perform the Work in a safe and diligent manner.

8.4 The Contractor warrants all Work to be free from any defects in materials and workmanship for a period of one (2) year following final completion and acceptance by the Owner.

9.0 Independent Contractor

Contractor shall perform all Work, using independent judgment and expertise, as an independent contractor and not as an employee of the Owner. Neither the Contractor nor any agent or employee of the Contractor shall be an agent or employee of the Owner nor shall any of them have any authority, express or implied, to bind the Owner to any agreement or incur any liability attributable to the Owner. Contractor acknowledges that it is not entitled to workers' compensation benefits and that Contractor is obligated to pay federal and state income tax on any moneys earned from the Owner pursuant to this Agreement.

10.0 Prime Contractor and Subcontractors.

The Contractor will assume all responsibility for the delivery, installation and quality of the Work regardless of whether or not the Contractor uses subcontractors. The Contractor shall be the sole point of contact with the Owner with regard to all matters covered by this Agreement.

The Owner may initiate or maintain contact with any subcontractor if such contact becomes necessary, in the Owner's judgment, to mitigate the Owner's damage in the event the Contractor is in default or breach of any obligation of this Agreement.

11.0 Government Regulations.

Contractor shall comply with all laws, statutes, ordinances, standards, rules, and regulations of all federal, state, municipal, and special Owner governmental authorities that are or may become applicable to any of the Work covered under this Agreement. Compliance shall also include, without limitation, applicable Owner policies and public records' requirements.

12.0 Claims.

12.1 Contractor shall pay, satisfy, and discharge all taxes, claims, charges, or other impositions of any nature or kind imposed on Contractor or the Project arising out of or in connection with the Work performed or provided hereunder and shall hold harmless and indemnify the Owner from any such claims.

12.2 The Contractor shall defend all suits or claims for infringement of any alleged patent rights, copyright, or trade secrets arising under this Agreement and shall indemnify the Owner from loss on account thereof and shall pay any judgments or fees resulting therefrom, including, but not limited to, royalties, license fees, and attorneys' fees.

13.0 Permits and Licensing Requirements.

As a condition of this Agreement, Contractor shall maintain in effect at all times during the term of this Agreement, any necessary license and/or registration as may be required by applicable law. Contractor shall ensure that each of its employees, subcontractors, or similar personnel that is subject to licensing and/or registration maintains in effect at all times while performing work on the Project, a valid and appropriate license and/or registration. Any permits, governmental fees, and licenses necessary for the proper execution and completion of the Work shall be secured and paid for by the Contractor unless otherwise specified by the Owner in writing, excluding State Building and Fire Permits, which the District will coordinate.

14.0 Taxes.

The Owner is exempt from paying any State sales or use taxes on any materials, supplies, or other equipment used or installed in the Work. To effectuate this exemption, the Contractor shall obtain a Certificate of Exemption from the Colorado Department of Revenue and file copies with the Owner before making any purchases or commencing work. No amounts paid to the Contractor pursuant to this agreement shall include reimbursement for such taxes.

15.0 Insurance of Contractor.

15.1 The Contractor shall procure and maintain the required insurance specified below

for the duration of this Agreement, which insurance shall be written for not less than the amounts specified or greater if required by law. The District’s receipt of a Certificate of Insurance from the Contractor with limits and or coverages that do not meet the requirements does not waive the requirements and the Contractor shall still be responsible for the limits and coverages stated in this Agreement. Specified coverages and amounts may be provided by a combination of a primary policy plus an umbrella or following form excess policy. All insurance shall be with a carrier licensed in the state of Colorado and shall have a minimum A.M. Best rating of A- VII. Contractor shall furnish the District’s Risk Management Department with certificates of the required insurance prior to the District’s approval and signing of this Agreement, and with renewal certificates prior to the expiration of any required insurance that expires during the term of this Agreement. Memorandums of Insurance will not be accepted. Certificates of Insurance and all communication regarding insurance shall be addressed to:

Poudre School District
 Attention: Risk Management
 2407 Laporte Ave
 Ft. Collins, CO 80521
 Please Email Certificates to: COI@psdschools.org

Any insurance and/or self-insurance carried by the District is excess of the coverage extended to the District by Contractor. Contractor shall provide at least thirty (30) days’ advance written notice to the District prior to cancellation, change of coverage, or non-renewal. The insurance requirements specified in this section shall not reduce the indemnification liability that Supplier has assumed in the indemnification section below.

Commercial General Liability

Minimum Limits

- Each Occurrence Bodily Injury & Property Damage \$2,000,000
- General Aggregate \$3,000,000
- Products/Completed Operations Aggregate \$2,000,000
- Personal/Advertising Injury \$2,000,000
- Coverage must be written on an “occurrence” basis.
- Poudre School District R-1 and its elected officials, employees, agents, and volunteers shall be named as an additional insured or covered as an additional insured by way of a blanket endorsement and shall be insured to the full limits of liability purchased by the Supplier even if those limits of liability are in excess of those required by this Agreement.

Commercial Automobile Liability Providing Coverage for Owned, Non-Owned, and Leased or Hired Vehicles

- Bodily Injury & Property Damage
 Combined Single Limit Minimum \$1,000,000

- If Supplier operates vehicles in performing any services under this Contract, the policy shall be endorsed to include the following additional insured language: “Poudre School District R-1, its elected officials, employees, agents, and volunteers shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Supplier” and shall be insured to the full limits of liability purchased by the Supplier even if those limits of liability are in excess of those required by this Contract. Copy of policy endorsement must be attached to the Certificate of Insurance.

Workers’ Compensation and Employers’ Liability

If Contractor is exempt under the Colorado Workers’ Compensation Act, this requirement will be waived if proof a current Workers’ Compensation Coverage Rejection is on file with the Colorado Department of Labor and Employment, Division of Worker’s Compensation and a copy is submitted to the District.

Minimum Limits

- State of Colorado Statutory
- Employer’s Liability \$100,000 Each Accident
\$500,000 Disease – Policy Limit
100,000 Disease – Each Employee
- Waiver of subrogation in favor of Poudre School District R-1.

15.2 Notwithstanding any other portion of this Agreement, failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement for which the Owner may immediately terminate this Agreement, or, at its discretion, the Owner may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all money so paid by the Owner shall be repaid by the Contractor to the Owner upon demand, or the Owner may offset the cost of the premiums against any money due to the Contractor from the Owner.

15.3 The certificate of insurance will indicate any limitation of coverage in the Contractor's insurance policy such as claims made, defense within limits and aggregates, etc. Acceptance of a certificate with less than the required amounts and coverage shall not be deemed a waiver of those requirements.

15.4 Contractor shall require its subcontractors to maintain Workers' Compensation Insurance, Comprehensive General Liability Insurance, and Comprehensive Automobile Liability Insurance with the same limits and conditions as insurance maintained by Contractor herein.

15.4 Notwithstanding the preceding, the Owner may waive or modify the requirements of this Section 15. Such waiver or modification shall not be effective unless made in writing executed by an appropriate officer or employee of the Owner.

16.0 Performance and Payment Bonds.

To the extent applicable, before commencing any work under this Agreement, the Contractor shall deliver to and file with the Owner bonds required by the Contract Documents, if specified, or if the Contract Documents are silent, then bonds in the full amount of the Contract Price, covering both the faithful performance of the Agreement and the payment of all obligations for labor and materials arising hereunder. Performance and payment bonds shall be on forms provided by the Owner unless otherwise approved in writing and must be issued by qualified sureties legally authorized to write such bonds in the State of Colorado and rated in Best's Insurance Guide (latest edition) not lower than A- and have a Best's Financial Rating of at least X. The Performance Bond shall additionally guarantee that the Contractor shall remedy any omissions; correct any and all defects; and adjust and make operable all component parts of the Work falling under the requirements of its Agreement that may be called to its attention within a period of twelve months (12) months following the Completion Date established in the Letter of Acceptance.

17.0 Inspection of Work.

The Owner reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement. If any of the Work does not conform to contract requirements, the Owner may require the Contractor to perform the Work again in conformity with contract requirements with no additional payment. When defects in the quality or quantity of Work cannot be corrected by re-performance, the Owner may (1) require the Contractor to take necessary action to ensure that the future performance conforms to the contract requirements and (2) equitably reduce the payment due the Contractor to reflect the reduced value of the Work performed. These remedies in no way limit the remedies available to the Owner in the termination provisions of this Agreement.

18.0 Indemnity.

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

19.0 Use of Work Product.

To the extent the Contractor creates any work product, including without limitation, Contractor's notes, memoranda, photographs, spreadsheets, data, drawings, specifications, and designs or plans (collectively "Work Product"), said Work Product shall be delivered to the Owner within the time frame(s) contemplated by this Agreement or at the latest upon completion of the

Work or termination of this Agreement and shall become the property of the Owner, thereby entitling the Owner to use, reuse the same and create derivative works based on the same and otherwise modify the same as the Owner desires, without additional compensation to the Contractor. The Contractor shall defend and indemnify the Owner from and against all suits or claims for infringement of any alleged patent rights, copyright, or trade secrets arising out of Owner's ownership or use of Contractor's Work Product and shall indemnify the Owner from loss on account thereof and shall pay any judgments or fees resulting therefrom, including, but not limited to, royalties, license fees, and attorneys' fees.

20.0 Termination.

20.1 This Agreement may be terminated by the Owner upon not less than five days' written notice should the Contractor fail substantially to perform in accordance with the terms of this Agreement through no fault of the Owner and may be terminated by the Owner upon thirty days' written notice without cause. Contractor shall not terminate this Agreement, without the written consent of the Owner, other than for nonpayment as provided below. In the event of termination of this Agreement not due to the fault of the Contractor, the Contractor shall be paid for Work performed to the date of termination, including reimbursable expenses then due. In the event of a termination for cause, the Owner may finish the Work by whatever method it may deem best and the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price shall exceed the expense of finishing the Work including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed the unpaid balance, the Contractor and its surety shall pay the difference to the Owner. In the event of termination, the Contractor shall deliver to the Owner all drawings, plans, reports, data, and similar materials relating to the Project prepared by or in the possession of the Contractor.

20.2 If the Project is suspended or abandoned by the Owner, in whole or in part, for more than two months, the Contractor shall be compensated for all Work performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with all reimbursable expenses then due. At its sole discretion, the Owner may terminate this Agreement by giving written notice to the Contractor if the Project is abandoned or suspended for more than two months.

20.3 If the Owner fails to make any undisputed payment when due, the Contractor may, upon ten days' written notice to the Owner, suspend performance of Work. Unless payment is received by the Contractor within ten days of the date of the notice, the suspension shall take effect without further notice.

21.0 Owner's Actions.

Any approvals or acceptance by the Owner in relation to this Agreement shall be an approval or acceptance of concepts based on the Contractor's representations and such approval or acceptance shall not be deemed to supersede the Contractor's judgment as to the technical sufficiency or propriety of the matter.

22.0 Force Majeure.

Neither the Contractor nor the Owner shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages, if and only to the extent that, such delay or failure is caused by “force majeure”. As used in this Agreement, “force majeure” means acts of God; acts of the public enemy; acts of the Owner and any governmental entity in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes, freight embargoes; illegality, or unusually severe weather.

23.0 No Assignment.

Contractor shall not assign or subcontract any of its rights or obligations hereunder without the express written consent of the Owner. Upon any assignment even though consented to by the Owner, the Contractor shall remain liable for the performance of the work under this Agreement.

24.0 Governing Law/Forum Selection.

This Agreement is made in and will be governed by the laws of the State of Colorado. Any legal action by either party to enforce an alleged breach or default shall be brought in the state district court located in Larimer County, Colorado.

25.0 Limitation of Actions.

Unless a longer period is provided by law, any legal action brought by the Owner against the Contractor to recover damages for injury to person, damage to property (including without limitation loss or damage to property on the Project itself), or defects in materials or workmanship shall be brought within two years after the claim for relief arises and is discovered by the Owner; provided, however, if written notice of a potential claim is given to the Contractor within such two-year period, then an action may be brought within four years after the claim for relief arises and is discovered by the Owner. "Discovered" as used herein means detection and knowledge by the Owner of the defect in the improvement or Work which ultimately causes the injury or damage (when such defect is of a substantial or significant nature) and the cause of such defect. In no case shall such an action be brought more than ten (10) years after final completion and acceptance of the Project.

26.0 Funds Availability.

Financial obligations of the Owner payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, budgeted or otherwise made available, the Agreement shall be terminated on the last day of the period for which funds were appropriated or monies made available for such purposes.

27.0 Equal Opportunity.

The Contractor shall not discriminate against any employee or applicant for employment because of religion, race, creed, color, sex, sexual orientation, gender identity or gender expression, national origin, disability, age or other protected status. The Contractor shall take action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, sexual orientation, gender identity or gender expression, marital status, national origin, ancestry, age, disability, religion, or other legally protected class. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

28.0 Premises Access Certification.

Contractor certifies it shall not employ on the Owner's premises any persons convicted of any felony or misdemeanor crime of unlawful sexual behavior involving children.

29.0 Work in Existing Buildings.

In addition to all other requirements of the Agreement, if the Work involves work in an existing building, the Contractor shall erect and maintain during the progress of the Work, suitable dustproof or airtight partitions to protect the building and any occupants thereof. If necessary, in the Owner's or Contractor's judgment or pursuant to the architect's or independent Contractors' directives or recommendations, in order to protect occupants or spaces from noxious fumes, odors, hazardous substances, or airborne substances, the Contractor may, at no additional cost to the Owner, be required to provide additional ventilation and/or to work different or extended hours to avoid disruption to other activities within the existing building. The scheduling of all Work shall be submitted to the Owner for approval. The various subcontractors will schedule their work jointly, in order that each may accomplish its work within such existing building in an orderly fashion during regular school vacation periods, evenings, or weekends where possible, or in such a manner as to permit full use of the building and without impairment of any existing facilities.

30.0 Cleaning Up.

Contractor shall at all times keep the location where the Work is performed free from accumulations of waste material and rubbish caused by its employees or the work, and shall remove all rubbish as often as it deems necessary or as directed by the Owner. Upon completion of the Work, the Contractor shall remove all its rubbish, tools, scaffolding, and surplus materials from and about the location where the Works was performed.

31.0 Safety, Health and Accident Reports.

The safety and health of Contractor and Contractor's employees and agents brought on Owner property will be the sole responsibility of Contractor. Contractor shall take all necessary

precautions to ensure the safety of all employees and other persons on the Project or who may be affected by the Work. Contractor will comply with all local, state, and federal environmental, health and safety requirements, including those relating to the transportation, use and handling of hazardous material. Contractor will report all accidents, injury-inducing occurrences or property damage arising from the performance of Services as soon as reasonably practical. Owner will have the right to receive, at its request, copies of any reports filed with Contractor's insurer or others. Contractor's employees and agents on Owner property will comply with applicable Owner rules and regulations.

32.0 Changes/Amendments.

At any time, by written order, the Owner may make changes in, request delays of, or additions to, the Work to be performed by this Agreement, issue additional instructions, require modified or additional work within the general scope of the Agreement, or vary the amount of Owner-furnished property. If the Contractor believes that any changes cause any increase or decrease in the cost of, or in the time required for, performance of Work under this Agreement, an equitable adjustment may be made in the Agreement price or term of performance, or both, and the Agreement will be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within ten (10) calendar days from the date of receipt by the Contractor of the notification of changes; provided, however, that the Owner, if it decides that the facts justify such action, may receive and act on any such claim asserted at any time prior to final payment under this Agreement. Failure to agree to any adjustment will be a dispute concerning a question of fact within the meaning of the clause of this Agreement titled "Disputes." However, nothing in this clause excuses the Contractor from proceeding with the Agreement as changed, and it is limited to proceeding with its appeal pursuant to the Section titled "Disputes," below. Other than written change directives or orders issued pursuant to this Section, no amendment, change or modification to this Agreement shall be effective or enforceable unless it is in writing and executed by each party.

33.0 No Conflict of Interest.

The Contractor agrees that at the time of execution of this Agreement Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Work. The Contractor further covenants that, in the performance of the Agreement, the Contractor shall not employ any person having any such known interests.

34.0 Owner's Inspection Of Contractor's Records.

The Contractor's records and the records of any of the Contractor's affiliates, subsidiaries or parent companies shall be subject to inspection and audit in connection with the Agreement. "Records" shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating worksheets, correspondence, Change Order files (including documentation covering negotiated settlements),

back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other supporting evidence reasonably deemed necessary by the Owner to substantiate charges related to the Agreement. All of the foregoing shall be open to inspection and subject to audit and/or reproduction by the Owner or its agent or authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the Work, the appropriateness of the adjusted guaranteed maximum, the quality of the Work installed, and/or any invoices, Change Orders, payments or claims submitted by the Contractor or any of its payees pursuant to the execution of the Agreement.

35.0 Immunity.

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

36.0 Notices.

All notices, requests, demands, and other communications given or to be given under this Agreement shall be in writing and shall be deemed to have been duly given when served if served personally, or on the second day after mailing if mailed by first-class mail, registered or certified, postage prepaid, or on the second day after delivery to overnight courier service, in either case properly addressed to the party to whom notice is to be given as set forth below.

If to Owner:

Poudre School District R-1
Attn: Chief Operations Officer
2445 Laporte Avenue
Fort Collins, Colorado 80521-2297

If to Contractor, then to the individual at the address set forth in the signature block below.

Either party may change its address for purposes of notice by giving written notice to the other party in accordance with this paragraph.

37.0 Entire Agreement.

This Agreement, together with the documents incorporated herein by reference, contains all of the terms, conditions, and provisions hereof and the entire understanding and all representations of understandings and discussions of the parties relating thereto, and all such prior representations, understandings, and discussions are merged herein and superseded and canceled by this Agreement. This Agreement may only be modified or amended by further agreement executed by the parties hereto.

38.0 Waiver.

Unless expressly made by the Board of Education of the Owner in writing, no waiver of any breach of any one of the agreements, terms, conditions, or covenants of this Construction Agreement by the Owner shall be deemed or imply or constitute a waiver of any other agreement, term, condition, or covenant of this Construction Agreement. The failure of the Owner to insist on strict performance of any agreement, term, condition, or covenant, herein set forth, shall not constitute or be construed as a waiver of the Owner's rights thereafter to enforce any other default; neither shall such failure to insist upon strict performance be deemed sufficient grounds to enable the Contractor to forego or subvert or otherwise disregard any other agreement, term, condition, or covenant of this Construction Agreement.

39.0 Severability.

If any provisions of this Construction Agreement are finally determined by a court of competent jurisdiction to be in violation of any statute or rule of law of the State of Colorado, then such provisions shall be deemed null and void to the extent that they may violate applicable law, but without invalidating the remaining provisions hereof.

40.0 Survival of Certain Terms.

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination or expiration date of the Agreement shall survive such termination or expiration date and shall be enforceable by the Owner as provided herein in the event of such failure to perform or to comply by the Contractor.

41.0 Attorney's Fees.

In the event it becomes necessary for either party to enforce any provisions or breach of this Construction Agreement by commencing litigation, the prevailing party in such action shall be entitled to collect, as part of any judgment entered, its reasonable expert witness and attorney's fees and costs.

42.0 No Third-Party Beneficiaries.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Owner.

43.0 Counterparts.

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same

instrument. For purposes of executing this Agreement, facsimile or scanned signatures shall be as valid as the original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written, and shall extend to and bind the parties, their successors, assigns, and personal representatives.

CONTRACTOR

POUDRE SCHOOL DISTRICT R-1

By: _____

Director of Facilities & Construction

Its: _____

Chief Financial Officer

SAMPLE