

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT ("Agreement") is made as of the XX<sup>th</sup> day of Month 20xx, between the Poudre School District R-1, State of Colorado ("Owner") and NAME ("Contractor"), in connection with PROJECT \_ BID NUMBER at ADDRESS, complete with all work appurtenant there to ("Project").

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

**1.00 THE CONTRACT DOCUMENTS.** The Contract Documents shall consist of this Construction Agreement, which Agreement also incorporates by this reference all of the instruments set forth in Article 1 of the General Contract Conditions as fully as if they were set forth in this Agreement in full and instruments described in Invitation to Bid No. BID (Exhibit A).

**2.00 SCOPE OF THE WORK.** The Contractor will furnish all tools, equipment, machinery, supplies, superintendence, insurance, transportation, and other construction accessories, services, and facilities specified or required to be incorporated in and form a permanent part of the completed work. In addition, the Contractor shall provide and perform all necessary labor in a first-class and workmanlike manner and in accordance with the conditions and prices stated in the Bid Proposal and the requirements, stipulations, provisions, and conditions of the Contract Documents, as defined in the attached General Conditions. The Contractor shall further perform, execute, construct, and complete all things mentioned to be done by the Contractor and all work included in and covered by the Owner's official award of this contract to the Contractor, such award being based on the acceptance by the Owner of the Contractor's bid, or part thereof.

**3.00 TIME OF COMMENCEMENT AND COMPLETION.** The Contractor agrees to commence work under this Agreement in accordance with the applicable Proposal (Exhibit B) on or before DATE and to fully complete all work by no later than DATE.

**4.00 TIME OF THE ESSENCE.** All time limits stated in this Agreement and the Contract Documents are of the essence of the Agreement.

**5.00 LIQUIDATED DAMAGES.**













1.01	<i>“Contract” or “Contract Documents”</i> .....	1
1.02	<i>“Owner”</i> .....	1
1.03	<i>“Contractor”</i> .....	1
1.04	<i>“Subcontractor”</i> .....	1
1.05	<i>“Architect”</i> .....	1
1.06	<i>“Notice to Contractor”</i> .....	1
1.07	<i>“The Work”</i> .....	1
1.08	<i>“The Project”</i> .....	1
1.09	<i>The “date of final completion” and “finally completed”</i> .....	2
1.10	<i>“Drawings” or “plans”</i> .....	2
1.11	<i>“Specifications”</i> .....	2
1.12	<i>“Change Order”</i> .....	2
1.13	<i>“day” or “days”</i> .....	2
<b>GC 2.00</b>	<b>REFERENCE STANDARDS</b> .....	<b>2</b>
<b>GC 3.00</b>	<b>DRAWINGS AND SPECIFICATIONS</b> .....	<b>2</b>
3.01	<i>Ownership of Drawings</i> .....	2
3.02	<i>Figured Dimensions to Govern</i> .....	2
3.03	<i>Contractor to Check Drawings and Schedules</i> .....	3
3.04	<i>Detail Drawings and Instructions</i> .....	3
3.05	<i>Drawings and Specifications Available on the</i>	





















**GC 1.00 CONTRACT DOCUMENTS AND DEFINITIONS**

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

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

- 1.01 “Contract” or “Contract Documents” shall include all of the items enumerated in GC-1.00 above.
- 1.02 “Owner” shall mean Poudre School District R-1

1.09 The “date of final completion” and “finally completed” shall mean the date when construction is certified by the Architect to be finally completed in accordance with the Contract Documents, as modified by any Change Orders processed under the terms of GC-23.00 below and when the Owner has fully accepted the Project for the use for which it was intended. Such date will be set forth on a letter of acceptance issued by the Owner.

1.10 “Drawings” or “plans” shall mean all (a) drawings furnished by the Owner and/or

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be executed until necessary dimensions have been obtained from the Architect.

3.03 Contractor to Check Drawings and Schedules. The Contractor shall check and verify all dimensions, elevations, and quantities.

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on account thereof. If the Contractor has information that the process or article specified involves the infringement of a patent, it shall be responsible for any and all liability or loss resulting therefrom unless it promptly 9(r)16

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performed, and correlated its observations with the requirements of the Contract Documents.

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placed in locations acceptable to the Architect and the Owner.

**GC 8.00**

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Contractor for such emergency action shall be determined by agreement of the Contractor, Owner and Architect, and an appropriate Change Order shall be issued therefor.

**GC 13.00**

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14.03 *Additional Supervision Duties.* The Contractor shall see that the Work is carried out in accordance with the Contract Documents and in a thorough and first-class manner in every respect. The Contractor shall provide engineering, surveying, and coordination to accurately establish all lines, levels, and marks necessary to facilitate the operations of all parties involved in the Contractor's Work. The Contractor shall lay out the Work in a manner satisfactory to the Architect, making permanent records of all lines and levels required for excavation, grading, and foundations, and for all other parts of the Work. The Contractor shall be responsible for the commencement and the proper completion of the various stages and sequences of construction. The Contractor shall strictly adhere to the approved construction schedule.

#### **GC 15.00      SUBSTITUTIONS**

The Contractor shall be held to have used in its base proposal and to furnish under the Contract those items of equipment and/or materials that are specifically identified in the plans and specifications by a manufacturer's name, model, or catalog number. Items of equipment and/or materials of the Contractor's choice may be offered as alternates to the items named in the plans and specifications by submitting, with the proposal and on the form provided, identifying data on the articles proposed together with a statement of the amount of addition or deduction from the base bid if the bidder's alternate is accepted. Prior approval by the Architect is not required on items submitted as alternate bids. After execution of the Construction

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data, and samples. All material finishes and samples shall be approved at one time. The Contractor shall

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

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

## **GC 23.00 CHANGES IN THE WORK**

23.01 Change Orders. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Project consisting of additions, deletions, or other revisions. Under such circumstances, the GMP, if applicable and established, and the Contract Time Schedule shall be adjusted accordingly. All such changes in the Work shall be authorized by Change Order. No Change Order or other form of order or directive by the Owner or Architect requiring additional compensable Work to be performed, which causes the aggregate amount payable under the Contract Documents to exceed the amount appropriated for the original agreement, shall be issued unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional Work have been made. Any claim of the Contractor for adjustment under this section must be asserted in writing within ten (10) days from the date of the Contractor's receipt of the Change Order.

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

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

- a. By estimate, with a detailed cost breakdown as set forth in GC-23.03(c) below, and acceptance in a lump sum, with a maximum combined markup to the Owner, for the Contractor and all affected subcontractors, not to exceed a total of fifteen percent (15%).
- b. By unit prices named in the Contract or subsequently agreed upon.
- c. If the parties are unable to agree on one of the above methods, then the amount shall be determined by force account under the following formula:

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

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

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

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

v. Either a predetermined lump sum; fixed fee; or a fee of fifteen percent (15%), which fee shall be applied to the total of GC-23.03(c)(i), GC-23.03(c)(ii) and GC-23.03(c)(iii) only, and shall constitute full compensation to the Contractor and all its subcontractors for all costs and expenses, including all overhead and profit, which are not otherwise enumerated in this GC-23.03(c).

vi. The Contractor shall keep and present, in such manner as the Owner may



Project is located, and only if a request for such an extension of time is received within seven (7) days of the first date of each delay. Extensions of time due to weather or other allowable reasons will be granted on the basis of 1.4 calendar days' credit for every working day lost with each separate extension figured to the nearest whole calendar day.

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

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

d. Should the time for completion of the Contract be extended, the Owner reserves the right to occupy any part of the structure upon written notice to the Contractor from the Architect or the Owner, but only after the Architect has made a thorough inspection, accompanied by the Contractor's superintendent, to note any defects in workmanship or materials that are the responsibility of the Contractor. Such inspection shall not be deemed to modify any other Contract requirements or provisions relating to observations, inspections or acceptance of the Work. Any such partial occupancy shall not be deemed a waiver of any provision for liquidated damages for delay in final completion.

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

25.02 *Article Not Exclusive.* This GC-25.00 does not exclude the recovery of damages by the Owner for delay under other provisions of the Contract Documents.

## **GC 26.00 ACCESS TO WORK**

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

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

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27.03 *Removal of Rejected Work.* The Co

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performed by the Owner, the Owner's employees, or by persons other than the Contractor at the Owner's request, the Owner shall not be liable to the Contractor for inconvenience expense or subsequent cost of removal of such Work. The amount to be deducted as the cost of doing the Work shall include the cost of the Architect's additional services made necessary by such default. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

**GC 29.00 OWNER'S RIGHT TO TERMINATE CONTRACT**

29.01 *Termination for Cause.* If the Contractor should be adjudged bankrupt; or if it should make a general assignment for the benefit of its creditors without approval of the Owner; or if a receiver should be appointed on account of its insolvency; or if it should refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers, competent supervision and superintendence of the Work, proper materials, or competent management of the Project; or if it should fail to make prompt payment to subcontractors or for material or labor; or disregard any laws, ordinances, or the instructions of the Architect or Owner; or otherwise be guilty of a material violation of the contract, the Contractor shall be liable to the Owner for the cost of completion of the Work, plus the cost of the Architect's additional services made necessary by such default. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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starting and completion dates of the various elements within the schedule shall represent one hundred percent (100%) completion of each element. Additional detailed schedules of separate elements of the Work such as commissioning, test and balance, and owner training, may be requested at the Owner's discretion. No request for payment shall be accepted by the Owner until this schedule has been submitted as required herein. This schedule shall be revised from time to time during the course of the Work when the actual progress, in the opinion of the Architect or the Owner, varies materially from that previously approved.

30.02 *Monthly Progress Reports.* The Contractor shall submit monthly (62)(B.00198(a)-168(1)-(4)phs)HD070

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schedule of values, the Contractor shall submit a schedule of estimated m

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shall have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein

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years after final payment to the Contractor.

**GC 33.00 INSURANCE**

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

a. Workers’ Compensation Insurance. The Contractor shall procure and maintain workers’ compensation insurance at its own expense during the term of the Construction Agreement, including occupational disease provisions for all employees per statutory requirements. Such policy shall contain a waiver of subrogation in favor of the Owner. The Contractor shall also require each subcontractor to furnish workers’ compensation insurance, including occupational disease provisions for all of the latter’s employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for subcontractor’s employees. In cases where any class of employees engaged in hazardous work under this Construction Agreement at the site of the Project is not protected under the Workers’ Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

b. Commercial General Liability Insurance. The Contractor, at its own expense, shall procure and maintain commercial general liability insurance to protect the Contractor from all claims for bodily injury, including death and all claims for destruction of or damage to property (other than the Work itself), arising out of or in connection with any operations under this Construction Agreement, whether such operations be by the Contractor or by any subcontractor under it or anyone directly or indirectly employed by the Contractor or by a subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form:

<u>Project Amount</u>	<u>\$0-10M</u>	<u>\$10M-30M</u>	<u>\$30M-50M</u>	<u>\$50M-\$100M</u>
<u>Insurance Required</u>				
General Aggregate	\$ 2,000,000	\$ 5,000,000	\$ 10,000,000	\$ 25,000,000





11. Premises and Operations

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Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. The policy shall be endorsed to include the following as Additional Insureds: "Owner, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its

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b. To pay the subcontractor not later than seven (7) days immediately following the payment of each certificate issued under the schedule of values described in these General Conditions, the amount allowed to the Contractor on account of the subcontractor's Work to the extent of the subcontractor's interest therein.

c. To pay the subcontractor, upon the payment certificates, if issued otherwise than as in GC 36.03(b) above, so that at all times the Contractor's total payments shall be as large in proportion to the value of the Work done by it as the total amount certified to the Contractor is to the value of the Work

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

38.02 Responsibility. Any cost caused by defective or improperly timed Work shall be borne by the party responsible therefor. The Contractor shall not endanger any Work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the Work of any subcontractor except with the consent of the Architect.

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as may be required and charge the cost to the Contractor.

#### **GC 41.00 USE OF PREMISES**

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

#### **GC 42.00 OCCUPANCY**

The Contractor, upon the Owner's written request, shall allow the Owner to occupy portions of the Work and to place and install, subject to reasonable restrictions, as much equipment and furnishings during the progress of the Work as is possible without interfering with the progress of the Work. Such occupancy and the placing or installing of equipment and furnishings shall not in any way evidence the final completion of the Work or signify the Owner's acceptance of the Work, or any part of it. Equipment includes such things as kitchen equipment, etc. Furnishings include such things as lockers, benches, desks, etc. Prior to occupancy, when practicable, the Architect shall make a thorough inspection accompanied by the Contractor's superintendent to note any defects in workmanship or materials.2 (npa(e)-1m- .3 (f)-424b9 (110.9 (i3 (p or)-4

44.01 Testing Plan. The Contractor shall submit a written plan prior to completion and acceptance, consistent with the Contract Documents and applicable codes, for the testing and training of owner's maintenance personnel. (n)2m CoawM20(3 (h)-9 w)6.6f (ndM20(3.68)-4.6 (2)-65 (C(h)-9 b( )-315u)2.3 (ca-4.6 (2)-65d)-2.6

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settlement for the Work shall be established

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issues to the Contractor with weekly status reports given to the Architect and Owner.

**GC 48.00 CONTRACTOR'S PROJECT GUARANTEE AFTER COMPLETION**

48.01 Warrant and Guarantee. The Contractor expressly warrants and guarantees that the Project will be constructed in a first-class, workmanlike manner; that it will be safe, free from structural and workmanship defects and defects in materials; and that the improvements will be suitable

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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.

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national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the state of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty days.

53.02 *Resident Bidders.* In compliance with Colorado Revised Statutes § 24-103-908, preference shall be given to resident bidders against nonresident bidders from a state or foreign country equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident. The term “resident bidder” means a person, partnership, corporation, or joint venture that is (a) authorized

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other manner have or acquire any lien upon the Project building or Works covered by this Contract, or the land upon which the same is situated.

**GC 56.00 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 Contract. “Records” shall include, but not be limited to, accounting records (hard copy, as well as computer readable data), written policies and procedures, subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.), original estimates, estimating worksheets, correspondence, Change Order files (including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other supporting evidence reasonably deemed necessary by the Owner to substantiate charges related to the Contract. All of the foregoing shall be open to inspection and subject to audit and/or reproduction by the Owner or its agent or authorized representative to the extent necessary to adequately permit evaluation and verification of the cost of the Work, the appropriateness of the adjusted guaranteed maximum, the quality of the Work installed, and/or any invoices, Change Orders, payments or claims submitted by the Contractor or any of its payees pursuant to the execution of the Contract.

**GC 57.00 CERTIFICATION BY CONTRACTOR REGARDING PREMISES ACCESS**

The Contractor certifies to Owner that Contractor will not knowingly employ on Poudre School District premises persons convicted of any felony or misdemeanor crime of unlawful sexual behavior involving children.



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