

**SUPPLEMENTARY CONDITIONS
TO AIA DOCUMENT A141-2024,
STANDARD FORM OF AGREEMENT BETWEEN OWNER
AND DESIGN-BUILDER**

The following supplements modify AIA Document A141-2024, Standard Form of Agreement between Owner and Design-Builder and the Exhibits attached thereto (collectively, the “Contract” or “Design Build Documents”). Where a portion of the Contract is modified or deleted by these Supplementary Conditions, the unaltered portions of the Contract shall remain in effect.

The terms used in these Supplementary Conditions have the meanings stated or as specifically defined in the Design Build Documents. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

Supplementary Conditions to A141-2024
Standard Form of Agreement Between Owner and Design-Builder

ARTICLE 1: GENERAL PROVISIONS

§ 1.1 OWNER’S CRITERIA

In **Section 1.1.6** add the following language “Such construction fee will be subject to annual appropriation by the Owner. The total budget for the Project shall not exceed \$2 million.”

§ 1.3 DISPUTE RESOLUTION

Delete **Section 1.3** in its entirety and replace with the following: “For any Claim subject to, but not resolved by, voluntary mediation pursuant to Section 14.3 (or arbitration for any Claim involving the architect related to design issues), the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the County where the Project is located; .”

ARTICLE 2: COMPENSATION AND PROGRESS PAYMENTS

§ 2.1.3 COMPENSATION FOR REIMBURSABLE EXPENSES PRIOR TO EXECUTION OF DESIGN-BUILD AMENDMENT

Add the following new Subsection:

§ 2.1.3.3 Notwithstanding anything to the contrary in the Design-Build Documents, and excepting necessary procurement of materials for which a reasonable effort at obtaining tax exempt certification is not feasible, Reimbursable Expenses shall not include any sales or use

taxes paid to the State of Colorado or of any county or municipality from which the Owner or the Project are exempt.

§ 2.3.2 LIQUIDATED DAMAGES

Delete **Section 2.3.2** in its entirety and insert the following:

§ 2.3.2 Liquidated Damages. If Design-Builder fails to perform the Project within the performance deadlines or milestone dates set forth in the A141-2024 Amendment (the “Performance Deadlines”), Design-Builder shall pay to Owner as liquidated damages (and not as a penalty) for ordinary and general damages and inconvenience (exclusive of any special damages such as, by way of example and not limitation, any liabilities to third parties) the sum of:

- (i) Late Substantial Completion: \$500 per day

The liquidated damages described in this Section are based upon Owner’s evaluation of its likely losses in the event the Performance Deadlines are not met. The liquidated damages herein established are agreed to by Design-Builder after full discussion of the implication of this Section. The failure to perform the work and complete the Project by the Performance Deadlines will cause significant damage to Owner. Owner and Design-Builder agree that such actual damages caused by Design-Builder’s failure to meet the Performance Deadlines would reasonably likely include, without limitation, the costs for additional construction management and other Owner representative/employee time; the costs for third-party consultants’ time; inefficiency and inconvenience damages to Owner’s business operations; damages to Owner’s reputation with third-parties (including governmental entities with regulatory jurisdiction over Owner), as well as other potential actual damages to Owner reasonably associated with the subject matter of this Agreement. The liquidated damages established herein are intended to be and are cumulative and shall be in addition to any other remedy enforceable at law under this Agreement.

ARTICLE 3: GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1.14 INDEMNIFICATION

Delete **Section 3.1.14.1** in its entirety and insert the following:

§ 3.1.14.1 Subject to Sections 13-21-111.5(6) and 13-50.5-102, C.R.S., to the extent applicable, Design-Builder shall indemnify, defend and hold the Owner, and its officers, directors, employees, agents, architects and attorneys, harmless from and against all costs, claims, damages, judgments, losses and expenses of every nature, including reasonable attorneys’ fees, arising at any time from any act or omission of the Design-Builder, its employees, its Consultants, Contractors, or subcontractors, and their employees, and all other persons directly or indirectly involved in or performing work for the Design-Builder (other than the Owner and any other third party while under the control or supervision of the Owner) on the Project. The

{00988454.DOCX / 3
}

TIMBERLINE FIRE PROTECTION DISTRICT
FIRE STATION 3 APPARATUS BAY EXPANSION
Supplementary Conditions

obligations of the indemnifications extended by Design-Builder hereunder shall survive termination or expiration of the Contract. Design-Builder's indemnification, defense, and insurance obligations shall be to the fullest extent permitted by law. Design-Builder shall not be liable for any claim, loss, damage, injury, or liability arising out of the negligence of Owner, its directors, employees, agents, and consultants, and nothing in the Contract Documents shall be construed as requiring Design-Builder to defend in litigation, indemnify, or insure Owner against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of Owner or any third party under the control or supervision of Owner.

Add the following new Subsection:

§ 3.1.14.3 To the extent permitted by law, Owner shall indemnify, defend, and hold the Design-Builder, its officers, directors, employees, agents, and subcontractors, harmless from and against all costs, claims, damages, judgments, losses, and expenses of every nature, including reasonable attorneys' fees, arising at any time from any negligent act or omission of the Owner, its employees, agents, contractors, or representatives.

§ 3.1.15 CONTINGENT ASSIGNMENT OF AGREEMENTS

In **Section 3.1.15.1.1**, delete "for cause, pursuant to Sections 14.1.4 or 14.2.2" and insert "for any reason"

ARTICLE 5: WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.6 TAXES

Add the following new Subsection:

§ 5.6.1 To the extent feasible, the Owner is exempt from payment of sales and compensating use taxes of the State of Colorado and of municipalities and counties thereof on all materials to be incorporated into the Work.

- .1** The Owner will, upon request, furnish the required certificates of tax exemption to the Design-Builder for use in the purchase of supplies and materials to be incorporated into the Work.
- .2** The Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by the Design-Builder, or to supplies or materials not incorporated into the Work.
- .3** The Owner will not reimburse the Design-Builder for any sales or use taxes paid to the State or any county or municipality from which Owner or the Project are exempt and for which reasonable efforts are not made in advance.

ARTICLE 6: CHANGES IN THE WORK

§ 6.2 CHANGE ORDERS

Add the following new Subsections:

§ 6.2.4 A fully executed Change Order represents full and final settlement for all costs (including all impact costs) and time relating to the work included in the change order. The following language shall be typed on the face of the Change Order:

THIS CHANGE ORDER CONSTITUTES FULL AND FINAL SETTLEMENT FOR ALL COSTS AND TIME ASSOCIATED WITH THE WORK DESCRIBED HEREIN. COSTS ARE DEFINED TO INCLUDE ALL DIRECT AND INDIRECT LABOR COSTS RELATED TO, AND/OR OCCASIONED BY THE WORK DESCRIBED HEREIN; ALL MATERIAL AND EQUIPMENT COSTS RELATED HERETO; ANY AND ALL IMPACT COSTS RELATED TO AND/OR OCCASIONED BY THE PERFORMANCE OF THIS WORK; AS WELL AS ALL APPLICABLE TAXES, INSURANCE, BONDS, AND PROFIT. ALL OTHER TERMS AND CONDITIONS OF THIS CONTRACT REMAIN IN FULL FORCE AND EFFECT.

§ 6.2.5 The Design-Build Documents are subject to Section 24-91-103.6, C.R.S., and in accordance therewith:

.1 The Owner shall not issue any Change Order or other directive (other than a clarification) requiring additional compensable Work to be performed that will cause the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract Sum and any subsequent appropriations, unless:

A. The Design-Builder is given written assurance by the Owner that lawful appropriations to cover the costs of the additional Work have been made and are available prior to performance of the additional Work; or

B. The additional Work is covered by the following remedy-granting provision: Design-Builder may request, in writing, a letter from the Owner explaining the expected sources of funding for the additional Work. In the event the Owner does not provide such written assurance reasonably satisfactory to the Design-Builder within five (5) days of the Design-Builder's request, the Design-Builder may stop Work until such time as the Owner provides satisfactory assurances. The Design-Builder's acceptance of a Change Order in accordance with any assurances provided under this Paragraph shall not limit or restrict the Design-Builder from making a Claim under the Design-Build Documents for an adjustment in the Contract Sum or Contract Times or otherwise for expenses or damages directly attributable to the Design-Builder's stoppage of the Work as permitted hereunder.

.2 For any Change Order or other directive (other than a clarification) that requires additional compensable Work to be performed, the Owner shall reimburse the Design-Builder for the Design-Builder's costs on the periodic basis set forth in the Design-Build Documents for all additional directed Work performed until the Change Order is finalized. In no instance shall the periodic reimbursement be required before the Design-Builder has submitted an estimate of cost to the Owner for the additional compensable Work to be performed.

§ 6.3 CHANGE DIRECTIVES

At the end of **Section 6.3.1**, insert "Construction Change Directives are subject to the requirements set forth in Section 6.2.5."

ARTICLE 7: OWNER'S RESPONSIBILITIES

§ 7.2.11 CONTRACT SUM

At the end of **Section 7.2.11**, insert "the Owner is not required to furnish any legal, accounting, or insurance services required of the Design-Builder under this Contract."

ARTICLE 9: PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 CONTRACT SUM

At the end of **Section 9.1**, insert "By execution and approval of the Design-Build Amendment, the Owner represents that it has appropriated money equal to or in excess of the Contract Sum for the Work."

§ 9.3 APPLICATIONS FOR PAYMENT

Add the following new Subsection:

§ 9.3.4 The Owner shall hold any Design-Builder contingency funds. The Design-Builder shall account for any claims on contingency funds in a timely Application for Payment. Upon Final Completion of the Work, any contingency funds not subject to a timely pay application shall remain with the Owner, and the Design-Builder shall not have any claim to such funds.

§ 9.6 PROGRESS PAYMENTS

At the end of **Section 9.6.8** insert "In accordance with § 24-91-103, C.R.S., the amount of the retainage in all instances shall be five percent (5%). Notwithstanding any other provision contained in the Design Build Documents to the contrary, such retainage of the Contract Sum shall be held by the Owner until the Project is completed and finally accepted by the Owner in accordance with the provisions hereof. The Owner shall pay the full amount of such retainage to the Design-Builder within sixty (60) days of Final Completion and acceptance, except to the extent of any claims filed pursuant to Section 38-26-107, C.R.S. Any release of retainage to the

Design-Builder or a Consultant, Contractor, or subcontractor prior to final payment shall, among other matters, require written approval from the surety furnishing bonds pursuant to and under the terms of this Contract.”

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

At the end of **Section 9.10.1**, insert “, subject to the final payment procedures set forth in Section 9.10.6. The Design-Builder shall achieve Final Completion of the Work as set forth in the A141-2024 Amendment.”

At the beginning of the first sentence of **Section 9.10.2**, insert “Subject to the final payment procedures set forth in Section 9.10.6,”

Delete **Section 9.10.3** in its entirety.

Add the following new Subsection:

§ 9.10.6 Final Payment Procedures. Notwithstanding any other provision contained in the Design Build Documents to the contrary, final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder in accordance with Section 38-26-107, C.R.S. Accordingly, the Owner shall cause Notice of Final Payment to be delivered to the Owner’s legal newspaper within ten (10) days of acceptance of the Design-Builder’s (i) notice that the Work is ready for final inspection and acceptance and (ii) final Application for Payment. Owner shall cause final payment to be made within ten (10) days after second publication of such Notice, subject to any verified claims or actions. Final payment shall proceed as follows:

Owner shall set the date and time for final settlement and advertise the same by two publications of notice thereof, the last publication appearing at least ten (10) days prior to the time of final settlement. Final payment and settlement will be made on the date of final settlement as advertised, or as soon thereafter as practicable. If any claim for unpaid labor, materials, supplies or equipment is filed with the Owner by a Consultant, Contractor, or subcontractor or supplier before payment in full of all sums due to the Design-Builder, the Owner shall withhold from the Design-Builder an amount equal to 150% of said claim unless otherwise secured to ensure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing with the Owner a receipt in full or an order for withdrawal signed by the claimant or its duly authorized agent or assignee. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Design-Builder as set forth in the published notice, unless a legal action has been commenced within that time to enforce such claim and a notice of *lis pendens* has been filed with the Owner. At the expiration of such ninety (90) day period, the Owner shall pay the Design-Builder all funds due under the Design-Build Documents that are not subject to such action and shall

retain thereafter, subject to the final outcome thereof, only sufficient funds to ensure the payment of such judgment as may result from such action. If any claim of a Consultant, Contractor, or subcontractor or supplier for labor, materials, supplies or equipment remains unsatisfied after all payments are made by the Owner to the Design-Builder, the Design-Builder shall refund to the Owner all sums which the latter may for any reason be legally compelled to pay to satisfy such claim, including all costs and attorney's fees incurred by the Owner as a result of the Design-Builder's failure to pay.

ARTICLE 10: PROTECTIONS OF PERSONS AND PROPERTY

§ 10.3 HAZARDOUS MATERIALS

Delete **Section 10.3.3** and **Section 10.3.6** in their entirety.

ARTICLE 11: INSURANCE AND BONDS

In **Section 11.4**, after “due to fire or other hazard” delete “however caused” and insert “not directly or indirectly caused by Deign-Builder.”

ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

In **Article 12**, all references to “one year” and “one-year” are changed to “two years” and “two-year,” respectively.

ARTICLE 13: COPYRIGHTS AND LICENSES

In **Section 13.3**, after “grants to the Owner”, insert “, and its successors in interest”

In **Section 13.3.1**, delete the second sentence of the Section in its entirety.

Delete the last sentence of **Section 13.3.2** in its entirety and replace with the following:

“The Design-Builder’s licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner, to obtain a limited irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner agrees to pay to the Architect, Consultant or Contractor all amounts due.”

ARTICLE 14: TERMINATION OR SUSPENSION

§ 14.2.2 TERMINATION BY THE OWNER FOR CAUSE

In **Sections 14.2.2.1.2 , 14.2.2.1.3 and 14.2.2.1.5**, delete “repeatedly”

Add the following new Subsection to **Section 14.2.2.1**:

{00988454.DOCX / 3
}

TIMBERLINE FIRE PROTECTION DISTRICT
FIRE STATION 3 APPARATUS BAY EXPANSION
Supplementary Conditions

.7 fails to prosecute the Work to completion in a diligent and timely manner and in strict accordance with the provisions of the Design-Build Documents (including the required dates for Substantial Completion and Final Completion or any interim completion dates).

§ 14.2.4 TERMINATION BY THE OWNER FOR CONVENIENCE

In **Section 14.2.4.3**, delete “and any other costs incurred by reason of the termination, including costs attributable to termination of Subcontracts” and insert the following:

The Design-Builder waives all claims for damages, including loss of anticipated overhead recovery or profits, on account of such termination. The payments provided for herein shall be the Design-Builder’s sole rights and remedy in the event of termination for convenience. Provisions of the Design-Build Documents that by their nature survive final acceptance of the Work shall remain in full force and effect after such termination to the extent therein provided.

ARTICLE 15: CLAIMS AND DISPUTE RESOLUTION

§ 15.1.2 TIME LIMITS ON CLAIMS

Add the following new Subsection:

§ 15.1.2.1 Any Claim or action at law or in equity upon or arising out of the Design-Build Documents or the Work performed thereunder (except for a state action based in tort, which shall be subject to the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S.) which is asserted by Design-Builder against Owner shall be commenced within two (2) years from the date when such claim or action accrued pursuant to Section 13-80-102(1)(h), C.R.S., or such claim or action shall thereafter be barred.

ARTICLE 16: MISCELLANEOUS PROVISIONS

§ 16.6 CONFIDENTIAL INFORMATION

Add the following new Subsection:

§ 16.6.3 Design-Builder understands and acknowledges that the Owner, as a local governmental entity, is subject to the Colorado Public Records Laws, Section 24, Article 72, C.R.S., including, but not limited to Part 2 of such laws known as the Colorado Open Records Act (“CORA”), and all documents in the Owner’s possession, including but not limited to any Instruments of Service, are potentially subject to disclosure under CORA. Owner shall have no liability for the release of such information it reasonably determines that it is required to release pursuant to CORA.

§ 16.8 INTERPRETATION

Add the following new Subsection:

§ 16.8.3 In the event of conflicts of discrepancies among the Design-Build Documents, interpretations will be based on the following priorities:

- .1 Modifications.
- .2 Supplementary Conditions.
- .3 Addenda, with those of later date having precedence over those of earlier date.
- .4 the Agreement.
- .5 Project Criteria.
- .6 The Design-Builder’s Proposal.
- .7 Other documents specifically enumerated in the Agreement as part of the Design-Build Documents.

In the case of conflicts or discrepancies amongst the Project Criteria, the Design-Builder’s Proposal, or other documents specifically enumerated in the Agreement as part of the Design-Build Documents, the better quality or greater quantity of Work shall be provided, unless otherwise agreed upon by the Owner and the Design-Builder.

Add the following new Section:

§ 16.11 Participation in Certified Apprentice Training Program. If the Owner used a prequalification process pursuant to Section 32-1-1805, C.R.S., to select and award the Work, by execution of the Contract Design-Builder represents, warrants, and agrees that the Design-Builder shall comply with the provisions of Section 32-1-1805(3), C.R.S., relating to access to apprentice training programs certified by the U.S. Department of Labor or a comparable alternative. If the Contract Price is two hundred fifty thousand dollars or more, Design-Builder represents, warrants, and agrees that all Consultants, Contractors or subcontractors, at any tier, have similar access to either a certified program or comparable alternative.

Add the following new Section:

§ 16.12 Colorado Labor. If the Project is financed in whole or in part by funds of the State or any county, municipality of the State, school district, special district, or other political subdivision of the state, and for which appropriation or expenditure for the Project exceeds \$500,000 for any fiscal year pursuant to §§ 8-17-101(2)(b), 24-103-908(1)(a), and 24-92-102(8), Colorado labor shall be employed to perform at least eighty percent (80%) of the work, unless such requirement is waived by the Owner in accordance with Section 8-17-101(1), C.R.S. “Colorado labor” means any person who is a resident of the State at the time of the Project. A “resident of the State” is a person who can provide a valid Colorado driver’s license, a valid State-issued photo identification, or documentation that he or she has resided in Colorado for the last thirty (30) days.

Add the following new Section:

§ 16.13 Counterparts, Electronic Signatures and Electronic Records. This Contract may be executed in two counterparts, each of which shall be an original, but all of which, together, shall

constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, et seq., C.R.S. The Contract and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Contract, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Contract in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

Add the following new Section:

§ 16.14 Force Majeure. Neither Party shall be held liable for any failure or delay in the performance of its obligations under this Contract if such failure or delay is caused by a Force Majeure event. For purposes of this Contract, “Force Majeure” shall include, but is not limited to, acts of God, natural disasters, war, terrorism, riots, strikes, lockouts, labor disputes, government actions, pandemics, fire, flood, or other similar events or circumstances beyond the reasonable control of the party affected.

Furthermore, the imposition of new tariffs, duties, taxes, or changes to existing tariffs or trade regulations, including but not limited to import or export restrictions or tariffs, by any relevant government authority shall be considered a Force Majeure event. If such tariffs or trade measures significantly impact the ability of a party to perform its obligations under this Contract, the affected Party shall promptly notify the other party, and the performance of the affected obligations may be suspended, delayed, or adjusted accordingly, pursuant to executed Change Order.

The affected Party shall make reasonable efforts to mitigate the effects of the Force Majeure event and resume performance as soon as reasonably possible. Any delays or failure to perform caused by a Force Majeure event shall not be deemed a breach of this Contract or give rise to a Claim.

Add the following new Section:

§ 16.15 Annual Appropriation. The Owner’s obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the Owner’s Board of Directors.

Add the following new Section:

§ 16.17 A141 Amendment. The Owner reserves the right to terminate this Contract at any time if any terms outlined in any proposed amendment to this Contract are deemed unsatisfactory by the Owner. Such termination shall be effective upon written notice to the other party, specifying the reason for termination. Termination of this Contract under this provision shall not give rise

to any claim, cause of action, or liability against the Owner under this Contract. The Design-Builder expressly waives any right to seek damages, compensation, or any other remedy as a result of such termination.

ARTICLE 17: SCOPE OF THE AGREEMENT

In **Section 17.1.5**, list the following:

Supplementary Conditions

Supplementary Conditions to A141-2024 Exhibit A
Insurance and Bonds

ARTICLE A.3: DESIGN-BUILDER’S INSURANCE AND BONDS

§ A.3.5. PERFORMANCE BOND AND PAYMENT BOND. Delete **Section A.3.5** in its entirety. The Performance and Payment Bonds required under this Contract shall be as follows:

.1 After approval of a Design-Build Amendment and prior to commencement of performance of the Work authorized by said Design-Build Amendment, the Design-Builder shall provide to the Owner a general performance and payment bond executed by the Design-Builder and an acceptable corporate surety, or authorized collateral approved by the Owner, in the full amount of the Contract Sum, including provisions for any adjustment of the Contract Sum in accordance with the terms of this Contract. Such bond shall expressly guarantee: (i) faithful performance of the Design-Build Documents and completion of the Project in complete compliance with the Design-Build Documents; and (ii) payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project. The Design-Builder shall obtain such bond on the Owner’s behalf separate and apart from any similar bond or surety or warranty agreement entered into independently between the Owner and any manufacturer or supplier. The Owner may, in its discretion, require that the bond guaranteeing payment to all persons performing labor and furnishing materials, supplies, tools and equipment in connection with the Project be separate from the bond guaranteeing performance. Notwithstanding anything contained within the bonds to the contrary, such bonds are required, in part, to comply with the minimum requirements of Section 38-26-106, C.R.S.

.2 The Owner shall give notice of any Claim that the Owner might assert against the Design-Builder on the performance or payment bonds to the Surety thereunder, unless waived in writing by the Surety. The Owner’s act of giving such notice or failure to give such notice shall not affect the Owner’s right to seek or pursue any remedy provided for in such bonds or under any other provisions of the Design-Build Documents. This provision does not modify any obligation the Design-Builder has to provide notification to the Surety under the General Conditions.

ARTICLE A.4: SPECIAL TERMS AND CONDITIONS

§ A.4.2. BUILDER’S RISK INSURANCE. The Design-Builder shall be responsible for purchasing and maintaining the builder’s risk insurance required under Section A.2.3.1. The provisions of Section A.2.3.1 shall be modified accordingly.