

APPENDIX D - SAMPLE CONSTRUCTION AGREEMENT

Rifle Falls SFU - Isolation Building
SCA23A

STATE OF COLORADO CONSTRUCTION AGREEMENT

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that he or she is duly authorized to execute this Contract and to bind the Party authorizing his or her signature.

<p>CONTRACTOR Contractor's Full Legal Name</p> <p>Signature: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Natural Resources Dan Gibbs, Executive Director Colorado Parks and Wildlife</p> <p>Signature: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p>2nd State or Contractor Signature if Needed</p> <p>_____ By: Name & Title of Person Signing for Signatory</p> <p>Date: _____</p>	<p>LEGAL REVIEW Phil Weiser, Attorney General</p> <p>By: _____ Assistant Attorney General</p> <p>Date: _____</p>
<p>In accordance with §24-30-202 C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>Signature: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Effective Date: _____</p>	

Project Summary Table

State Agency Department of Natural Resources Colorado Parks and Wildlife 6060 Broadway Denver, Colorado 80203	Bid Number: IFB1 PMAA 2023*###
Contractor Contractor's Full Legal Name Address	Project Name and Purpose 4291, Rifle Falls SFU – Isolation Building and the purpose of the contract is to construct a 26' x 33' hatchery building.
Contract Maximum Amount	Performance Time 120 Calendar Days

1. PARTIES

This Contract is entered into by and between Contractor named above and on the Signature Page for this Contract (the “Contractor”), and the State of Colorado acting by and through the State agency named above and on the Project Summary Table for this Contract (the “State” or “CPW”). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

- a. The Effective Date for this Contract is the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract.
- b. This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any work performed or expense incurred before the Effective Date or after the expiration or earlier termination of this Contract.
- c. Contractor’s performance under this Contract will not begin until the issuance of the Notice to Proceed as specified in the CPW’s General Conditions, as revised July 18, 2018 (the “GCs”).
- d. The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in whole or in part.

3. AUTHORITY

Authority for the State to enter into this Contract exists in 33-10-107(1)(d) C.R.S. The Contractor was selected under the procurement code, 24-103-202 C.R.S.

4. CONTRACT DOCUMENTS

The GCs and the Contract Documents described therein are all incorporated by reference and made a part of this Contract.

5. CONTRACTOR PERFORMANCE

- a. Contractor shall perform its obligations under this Contract in accordance with the professional standards of care, skill and diligence in Contractor’s industry, trade, or profession to the satisfaction of the State and its Project Manager in strict accordance with the provisions of the Contract Documents.

- b. The Contractor shall furnish all the work, labor and materials and perform all the work required for the complete and prompt execution of everything described or shown in, or reasonably implied from the Contract Documents above described project.
- c. The Contractor shall complete the entire project within the Performance Time as shown in the Project Summary Table. The Contractor shall begin work within ten days from the Notice to Proceed and to prosecute the work with due diligence to completion. The Contractor agrees that the completion of the project within the Performance Time is an essential feature of this Contract and agrees to proceed with due diligence, taking all precautions and making all necessary arrangements to ensure the completion of the work within the prescribed time.
- d. The Contractor agrees that failure to complete the work within the time allowed shall be considered as a breach of the Contract and entitle the State of Colorado to collect liquidated damages for delay in completion, in accordance with the bid documents.

6. PAYMENT

The State shall pay the Contractor an amount not to exceed the Contract Maximum Amount specified in the Project Summary Table for performance of this Contract, subject to any additions or deductions as provided in the Contract Documents. Payments under this Contract are subject to the terms and conditions outlined in the GCs.

7. GENERAL PROVISIONS

- a. **Binding Effect**

Except as otherwise provided in the GCs, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.
- b. **Captions and References**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.
- c. **Counterparts**

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- d. **Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties related to the project, and all prior representations and understandings related to the project, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.
- e. **Jurisdiction and Venue**

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
- f. **Modification**

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.
- g. **Statutes, Regulations, Fiscal Rules, and Other Authority**

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

h. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

i. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

j. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in this §7., this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties

k. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

l. Indemnification

To the extent authorized by law, Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this contract.

8. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. **STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. **FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. **GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. 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 Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the

Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.