

STATE OF COLORADO MAIN TASK ORDER CONTRACT

COVER PAGE

State Agency Colorado Department of Transportation (CDOT) Add Enterprise name if a party to this contract, if applicable	Main Task Order Contract Number/OLA Contract Smart Number of the Main Task Order Contract & Contract OLA Number
Consultant Insert Contractor's Full Legal Name as shown on SOS page, including "Inc.", "LLC", etc...	Contract Performance Beginning Date Effective Date
Contract Maximum Amount \$ 0.00	
Contract Authority §§ 24-30-1401, <i>et seq.</i> and 43-l-110, C.R.S., as amended	Initial Contract Expiration Date Month Day, Year

Contract Type: "As Needed" Project Specific, Non-Project Specific or Program Specific

Contract Purpose Briefly describe the Contract's purpose

Exhibits and Order of Precedence
 The following Exhibits and attachments are included with this Contract:

1. Exhibit A - Statement of Work
2. Exhibit B - Rates Schedule and Payment Terms
3. Exhibit C - Modification Documents
4. Exhibit D - Consultant Performance Evaluation
5. Attachment 1 - ESB Requirements
6. Consultant Certification

In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions in §18 of the main body of this Contract.
2. The provisions of the other sections of the main body of this Contract.
3. Exhibit A, Statement of Work.
4. Exhibit B, Rates Schedule and Payment Terms
5. Exhibit C, Modification Documents
6. Exhibit D, Consultant Performance Evaluation
7. Attachment 1, ESB Requirements

Principal Representatives	
For the State: Name Colorado Department of Transportation Address Address City, State Zip Email Phone	For Consultant: Name Company Name Address Address City, State Zip Email Phone

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>CONSULTANT INSERT-Legal Name of Consultant</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation Shoshana M. Lew, Executive Director</p> <p>By: Keith Stefanik P. E., Chief Engineer</p> <p>Date: _____</p>
<p>INSERT- signature block content for any additional signatory required on this contract, if applicable. If no additional signatory is needed, please delete this box.</p>	<p>LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p>By: _____ Assistant Attorney General</p> <p>Date: _____</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.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Office of the State Controller, Controller Delegate OR Department of Transportation

Effective Date: _____

Contract Provisions

1. Parties

This Contract is entered into by and between Consultant named on the Cover Page for this Contract (the “**Consultant**”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Contract (the “**State**”). Consultant and the State agree to the terms and conditions in this Contract.

2. Term And Effective Date

A. Effective Date

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 Consultant for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

B. Initial Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Cover Page for this Contract (the “**Initial Term**”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. Early Termination in the Public Interest

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 or any Task Order ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract or that Task Order in whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for Breach of Contract by Consultant, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Consultant of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract or a Task Order, and shall include, to the extent practicable, the public interest justification for the termination. A termination of all or a part of a Task Order shall not be interpreted to terminate this Contract or any other Task Order.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Consultant shall be subject to the rights and obligations set forth in **§12.A.i.a.**

iii. Payments

If the State terminates this Contract or a Task Order in the public interest, the State shall pay Consultant an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted under all terminated Task Orders, as determined by the State, less payments previously made. Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Consultant for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Consultant which are directly attributable to the uncompleted portion of Consultant's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Consultant hereunder.

3. Definitions

The following terms shall be construed and interpreted as follows:

- A. **"Applicable Rates"** means the actual direct labor rates of pay that had been initially negotiated by the Parties and certified by the Consultant pursuant to § 24-30-1404(1), C.R.S. and approved by CDOT in accordance with applicable provisions of the Federal Acquisition Regulations, Part 31 (Title 48 Code of Federal Regulations, Part 31) via the Master Pricing Agreement "MPA". The rates in the MPA take precedence over the rates established in this Contract under Exhibit B.
- B. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Consultant, or the appointment of a receiver or similar officer for Consultant or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Consultant is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- C. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- D. **"Chief Engineer"** means the individual appointed by CDOT's Executive Director pursuant to Section 13 of Article XII of the State constitution as defined in §43-1-109, C.R.S.
- E. **"Consultant"** means the party responsible for the performance of the Work named on the Cover Page.
- F. **"Contract"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- G. **"Contract Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract and all Task Orders.

- H. **“Contract Maximum Amount”** means an amount equal to the total of Contract Funds for all Task Orders issued pursuant to this Contract.
- I. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- J. **“Emerging Small Business”** or **“ESB”** means a CDOT administrated program to provide assistance to certified emerging small businesses.
- K. **“Effective Date”** means 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.
- L. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- M. **“Fixed Fee”** means an allowed negotiated amount that is fixed at the inception of the Contract as established in Exhibit B.
- N. **“Goods”** means any movable material acquired, produced, or delivered by Consultant as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Consultant in connection with the Services.
- O. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- P. **“Initial Term”** means the time period defined in **§2.B**.
- Q. **“Master Pricing Agreement”** or **“MPA”** means an executed agreement between CDOT and Consultant that establishes the payment terms allowed for Consultant to provide consulting services on CDOT projects.
- R. **“Party”** means the State or Consultant, and **“Parties”** means both the State and Consultant.
- S. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et. seq.*, C.R.S.
- T. **“Project”** means a specific portion of the Work that is included in a Task Order.

- U. **“Services”** means the services to be performed by Consultant as set forth in this Contract, and shall include any services to be rendered by Consultant in connection with the Goods.
- V. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Consultant which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Consultant without restrictions at the time of its disclosure to Consultant; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Consultant to the State; (iv) is disclosed to Consultant, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- W. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- X. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- Y. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- Z. **“Sub Consultant”** means third-parties, if any, engaged by Consultant to aid in performance of the Work which provides Consultant Services.
- AA. **“Task Order”** means a document issued in accordance with §4.B of this Contract that specifically describes the Work to be performed on a Project.
- BB. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- CC. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. Statement Of Work And Task Orders

A. General Statement of Work

The State desires to engage the Consultant to be available to perform the Work on an "as needed" basis as provided herein, and the Consultant desires to perform the

Work on an "as needed" basis as described in this Contract and in accordance with the provisions of Exhibit A and any Task Order. The State shall have no liability to compensate Consultant for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Contract or a properly executed Task Order.

B. Task Orders

The State may execute Task Orders to authorize Consultant to perform portions of the Work. The State may execute Task Orders in its discretion and the State is not required to execute any minimum number of Task Orders under this Contract. No Task Order will be issued until the State determines that the Consultant has demonstrated good faith efforts to meet the ESB goal set forth in the advertisement.

i. Task Order Development

- a. If the State has need of Services to perform a particular task, and if the Consultant agrees to provide those Services, the State will then provide a definition of the task requirements to the Consultant.
- b. For Non-Project Specific contracts the Consultant will submit a written mini-proposal consistent with the task requirements to the State to perform that task (the "Mini-Proposal"). Once the successful Consultant is identified a final proposal (the "Final Proposal") shall be submitted to the State with Applicable Rates. For Project Specific and Program Specific Contracts the Consultant will submit a written proposal consistent with the task requirements to the State to perform that task (the "Specific Proposal") using the Applicable Rates. Mini-Proposal, Final Proposal and Specific Proposal shall collectively be referred to as ("Proposals"). All Proposals shall include the following:
 - i. The estimated number of hours to perform that task and other direct costs, at the Applicable Rates, and a resulting price/cost ceiling for that task, the completion date and any other relevant information. The Proposal shall also include any material costs, the amount of any other elements of cost at the same rates as stated in the Proposal, except for any approved changes, the proposed time for performance for that task, and the ESB documentation required by Attachment 1, all in a form acceptable to the State.
 - ii. A reference to this original Contract between the Parties. A representative of the Consultant who is authorized to contractually bind the Consultant shall sign and execute the Proposal. The Proposal shall expressly provide that the Consultant's execution of the Proposal constitutes its formal agreement (without further signature) to a Task Order that is issued by the State pursuant to the terms of that Proposal and that does not make any substantive change(s) in that Proposal. (If the Task Order makes such change(s) in the Task Proposal, then the Task

Order must contain the signature block of both Parties and both Parties need to sign the Task Order.)

- iii. The final deliverables and other end results of the Project that the State will use to determine if the Project is complete and the dates on which those deliverables and other end results will be complete.
 - iv. All activities necessary for Consultant to complete the Project. This description may be in the form of a work breakdown structure if requested or approved by the State.
 - v. All timelines and milestones that the State will use to determine if Consultant is on schedule to complete the Project. This description may be in the form of a project plan if requested or approved by the State.
 - vi. The total price of the Project, including a breakdown of any applicable materials costs, labor costs and other cost components as requested by the State as described in this Contract. The total price of a Project shall be determined based on the rates described in this Contract, and Consultant shall not include any work in a Task Order for which an applicable rate is not provided in this Contract.
- c. Consultant may complete a Project in phases, so long as all other requirements of this paragraph 4.B.i are included for each phase of the Project.
 - d. The State may direct Consultant to make changes to any Proposal Consultant submits to the State. Consultant shall make all changes as directed by the State and may modify its price for the Project contained in that Proposal to account for those changes. The State may accept or reject any Proposal Consultant submits at any time, and may choose to not proceed with a Project prior to execution of a Task Order for that Project, in its sole discretion.
- ii. Task Order Issuance
 - a. Upon negotiation and agreement by the Parties of the Proposal, the price/cost ceiling of the Task Order, and the time for performance, the Task Order attached as Exhibit C-1 shall be prepared and signed by the Parties with the Proposal attached. The State's financial commitment memorialized by the Task Order shall not be effective until signed by the Controller or such assistant as he may designate. The Consultant shall perform the Work in accordance with directives and authorizations by the State's representative and pursuant to the terms and conditions of this Contract in a manner acceptable to the State. The Consultant shall begin performance of the Work if, and only to the extent that, the State specifically authorizes the work by executing a Task Order, and the State's representative(s) issues and the Consultant receives a written Notice to Proceed setting forth the Work to be performed, which will be issued by

email. Any Task Order issued pursuant to this Contract shall incorporate the terms of this Contract by reference.

b. Task Order Completion

Consultant shall perform the Project described in each Task Order that the State has executed, within the timelines and by the due dates described in that Task Order. The obligations and requirements of a Task Order shall be deemed to be obligations and requirements of this Contract.

iii. Task Order Modifications

a. When the Parties desire to modify a Task Order, Consultant shall update its Proposal that was included in the Task Order to account for the modification the Parties desire to make. If both Parties agree to the updated Proposal, they may modify the Task Order by executing an amendment to the Task Order that includes the updated Proposal in the form of Exhibit C-2 (Time Extension) or Exhibit C-3 (Add Funds/Add Funds and Time Extension). No modified requirement of a Task Order shall be enforceable prior to the execution of the amendment to the Task Order that includes that modification.

b. The Parties shall execute a Reallocation Form for any modification to a Task Order that only modifies the breakdown of costs within a Project without changing the total maximum amount, which may be made if the State approves of the modification in writing. Such Reallocation Form shall be executed in accordance with CDOT requirements.

iv. Task Order Termination

Regardless of the date of any deliverable or other end result of a Task Order, all Task Orders shall automatically terminate upon the date that this Contract expires or is terminated for any reason, unless the State directs otherwise in writing.

v. Task Order Liquidation(s)

a. When the Parties desire to liquidate a Task Order prior to the Task Order expiration date based on completion of the Work, the Consultant shall submit a final invoice to the State representative clearly stating "Final Invoice" on CDOT Form 1313. The "Remaining Amount" listed on CDOT Form 1313 will be the amount to be liquidated. CDOT shall send a notification by email to the Consultant detailing the final billed amount in accordance with CDOT requirements. The notification will serve as the termination date of the Task Order.

vi. Consultant Commitments

For any Task Order which may be issued pursuant to the terms of this Contract:

- b. The Consultant shall be responsible for all Task Order Work being accurate and complete.
 - c. The Consultant shall begin performance of the Work on the date indicated in the State's written "Notice to Proceed. The date indicated in the "Notice to Proceed" shall be the date upon which all Contract time-count for completion of the Work shall be based. The Consultant shall not begin Work until the State issues a "Notice to Proceed".
 - d. The Consultant shall complete any Work within the time set for the completion of such in the Task Order exclusive of all days lost for review and approvals by the State, or by other official agencies whose approval must be obtained by the State. All days lost for review shall be documented in the Consultant's certified progress reports.
- v. State Commitments

For any Task Order which may be issued pursuant to this Contract:

- a. The State shall provide cooperation with the Consultant as requested, which the State determines to be reasonable.
- b. The State shall provide those services and electronic copies of those publications, which are described in the Task Order (State's reproduction facilities will not be available to the Consultant).
- c. The State shall provide access to State computer resources to the Consultant for the Work only as expressly provided in the Task Order.
- d. The State's project manager specified for the Task Order shall inspect the Work and coordinate all stages of the Work. Notwithstanding such inspection and coordination, the Consultant shall remain solely responsible for the accuracy and completeness of the Work.
- e. Upon written notice from the Consultant of the existence of causes over which the Consultant has no control and which may delay the Work, the State may, if it finds said causes sufficient, extend the time specified for completion of the Work by an appropriate modification.

C. Applicable Rates

- i. During the term of this Contract the Consultant and Sub Consultant rates shall be determined in accordance with the MPA.

D. Sub Consultant changes

- i. Subject to the State's prior approval thereof, the Consultant may substitute and/or add a Sub Consultant(s) by use of an amendment to this Contract.
- ii. Communications. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Region Project Manager identified on the Task Order and the Consultant.

E. Authorization and Approvals

The Consultant is hereby advised that the reimbursement to the State of federal-aid funds by the U.S. Department of Transportation, Federal Highway Administration (“FHWA”), for work on this Contract requires step-by-step scheduling and authorizations to proceed. The State will exert every effort to make its determinations promptly and to obtain necessary approvals from FHWA. For critical matters, the State will not issue authorizations to proceed until the matters have been accepted by the FHWA. The Consultant agrees not to proceed with any phase of the Work until written authorization therefore has been issued by the State. In the event the Consultant knowingly or otherwise proceeds with any Work prior to the authorization therefore, and this action results in the State being denied reimbursement from federal-aid funds for fees covered in this Contract, the Consultant shall be liable and shall reimburse the State in full for loss of such funds.

5. PAYMENTS TO CONSULTANT

A. Contract Maximum Amount

The cumulative not-to-exceed amount for Contract Funds for all Task Orders issued pursuant to this Contract is the amount specified on the Cover Page and Consultant shall not accept Task Orders resulting in a cumulative amount in excess thereof. Payments to Consultant are limited to the unpaid, obligated balance of the Contract Funds. The Contract Maximum Amount shall be equal to the total maximum amount of all Contract Funds for Task Orders. The State shall not pay Consultant any amount under this Contract that exceeds the Contract Maximum Amount of all Task Orders, and shall not pay any amount under any Task Order that exceeds the maximum amount shown on that Task Order. Payments to Consultant are limited to the unpaid, obligated balance of the Contract Funds.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Consultant in the amounts and in accordance with the schedule and other conditions set forth in Exhibits A and B and the terms of each Task Order.
- b. Consultant shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Consultant and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Consultant shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Contract.
- e. Progress payments may be claimed on a monthly basis pursuant to the payment format approved in any relevant Task Order issued pursuant to this Contract:

the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in §2.C.

v. Overpayment

- a. If the Consultant knows or reasonably should know that it has received an overpayment, it shall be responsible for reporting this fact to the State and shall immediately refund the overpayment. Failure to do so will result in interest accruing on the over payment at the rate set by § 24-30-202(24)(a), C.R.S. from the date the overpayment was discovered by the Consultant, or reasonably should have been discovered, until payment is made.
- b. If there is an audit and the Consultant fails or refuses to so reimburse the State not later than 45 calendar days after receipt of the final audit report, the State shall have the right to charge interest on that amount from that date at the rate described in § 24-30-202(24)(a), C.R.S., and to offset the disallowed amount plus interest from any payment(s) owed, now or in the future, by the State to the Consultant, whether under this Contract or other contracts.

vi. Underpayment

If the State has underpaid the Consultant, the State shall reimburse the Consultant for the balance due not later than 45 calendar days after receipt of the final audit report. The Consultant shall have the right to charge interest on that amount from that date at the rate described in § 24-30-202(24)(a), C.R.S.

6. Reporting - Notification

A. Monthly Reports

The Consultant shall submit monthly progress reports to the State. Failure to submit a progress report may result in non-payment to the Consultant for the month. The progress report will be reviewed by the State and, after deemed satisfactory by the State, will be used as justification for billing. The progress report shall contain, but not limited to, the following:

- i. Report on progress of each Work activity or milestone identified in the Contract and/or Task Order, to show the amount of Work accomplished during the current month and the amount of Work accomplished overall.
- ii. A report on the time scheduled for each Work activity or milestone identified in the Contract and/or Task Order to show planned time completion and actual times used to do the Work.
- iii. A description of the cause for delays beyond the planned completion time of Work activities or milestones contained in the Contract and/or Task Order.

- iv. A report on the cost incurred to date on each Work activity or milestone contained in the Contract and/or Task Order and a comparison to the cost estimates for such activity or milestone.
- v. A description of possible remedies to get activities or milestones that are behind schedule, back on schedule, and to get activities or milestones that are exceeding cost estimates, back within planned costs.
- vi. Documentation of meetings that were held during the subject time period.
- vii. A report of payments made to Sub Consultants and vendors.

B. Litigation Reporting

If Consultant is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Consultant's ability to perform its obligations under this Contract, Consultant shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Cover Page for this Contract.

7. Consultant Records

A. Maintenance

Consultant shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "**Consultant Records**"). Consultant Records shall include all documents, records, communications, notes and other materials maintained by Consultant that relate to any Work performed by Sub Consultants, and Consultant shall maintain all records related to the Work performed by Sub Consultants required to ensure proper performance of that Work. Consultant shall maintain Consultant Records until the last to occur of: (i) the date 3 years after the date this Contract expires or is terminated, (ii) final payment under this Contract is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Consultant has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "**Record Retention Period**").

B. Inspection

Consultant shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Consultant Records during the Record Retention Period. Consultant shall make Consultant Records available during normal business hours at Consultant's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, in its discretion, may monitor Consultant's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Consultant's performance in a manner that does not unduly interfere with Consultant's performance of the Work. All applicable rates, including direct labor

rates, for each employee and Sub Consultant shall be subject to final audit to verify compliance with negotiated salary costs. If the Consultant bills a specific rate greater than that based on the negotiated labor costs, the final audit will disallow the billed amount, which is determined to be based on a salary rate in excess of negotiated direct labor costs. In that event the Consultant shall reimburse the State the disallowed amount. If the Consultant fails or refuses to so reimburse the State, such shall be treated as an overpayment pursuant to **§5.B.v.b.** If the State has underpaid the Consultant, the payment shall be treated as an underpayment pursuant to **§5.B.vi.**

D. Final Audit Report

Consultant shall promptly submit to the State a copy of any final audit report of an audit performed on Consultant's records that relates to or affects this Contract or the Work, whether the audit is conducted by Consultant or a third party.

8. Confidential Information-State Records

A. Confidentiality

Consultant shall keep confidential, and cause all Sub Consultants to keep confidential, all State Records, unless those State Records are publicly available. Consultant shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in Writing by the State. Consultant shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Consultant shall immediately forward any request or demand for State Records to the State's Principal Representative.

B. Other Entity Access and Nondisclosure Agreements

Consultant may provide State Records to its agents, employees, assigns and Sub Consultants as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Sub Consultants who require access to perform their obligations under this Contract. Consultant shall ensure all such agents, employees, assigns, and Sub Consultants sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Sub Consultant has access to any State Confidential Information. Consultant shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

C. Use, Security, and Retention

Consultant shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Consultant shall provide the State with access, subject to Consultant's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating

security control effectiveness. Upon the expiration or termination of this Contract, Consultant shall return State Records provided to Consultant or destroy such State Records and certify to the State that it has done so, as directed by the State. If Consultant is prevented by law or regulation from returning or destroying State Confidential Information, Consultant warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Consultant becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Consultant can establish that none of Consultant or any of its agents, employees, assigns or Sub Consultants are the cause or source of the Incident, Consultant shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Consultant shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan in its sole discretion, and Consultant shall make all modifications as directed by the State. If Consultant cannot produce its analysis and plan within the allotted time, the State, in its discretion, may perform such analysis and produce a remediation plan, and Consultant shall reimburse the State for the actual costs thereof. The State may, in its sole discretion and at Consultant's sole expense, require Consultant to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Consultant shall provide the State with the results of such audit and evidence of Consultant's planned remediation in response to any negative findings.

E. Data Protection and Handling

Consultant shall ensure that all State Records and Work Product in the possession of Consultant or any Sub Consultants are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Consultant or any of its Sub Consultants will or may receive PII under this Contract, Consultant shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Consultant shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101, *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, *et seq.*, C.R.S., Consultant, including, but not limited to, Consultant's employees, agents and Sub Consultants, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement.

9. Conflicts Of Interest

A. Actual Conflicts of Interest

Consultant shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Consultant under this Contract. Such a conflict of interest would arise when a Consultant or Sub Consultant's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Consultant acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Consultant shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Consultant's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Consultant is uncertain whether a conflict or the appearance of a conflict has arisen, Consultant shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

D. Consultant acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Consultant further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Contract.

10. Insurance

Consultant shall obtain and maintain, and ensure that each Sub Consultant shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Consultant or Sub Consultant employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent Consultants, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;

- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 per claim; and
- ii. \$1,000,000 general aggregate.

E. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Consultant and Sub Consultants.

F. Primacy of Coverage

Coverage required of Consultant and each Sub Consultant shall be primary over any insurance or self-insurance program carried by Consultant or the State.

G. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Consultant and Consultant shall forward such notice to the State in accordance with §14 within seven days of Consultant's receipt of such notice.

H. Subrogation Waiver

All insurance policies secured or maintained by Consultant or its Sub Consultants in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Consultant or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

I. Public Entities

If Consultant is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Consultant shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Sub Consultant is a public entity within the meaning of the GIA, Consultant shall ensure that the Sub Consultant maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy

or self-insurance, as is necessary to meet the Sub Consultant's obligations under the GIA.

J. Certificates

Consultant shall provide to the State certificates evidencing Consultant's insurance coverage required in this Contract within seven Business Days following the Effective Date. Consultant shall provide to the State certificates evidencing Sub Consultant insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Consultant's subcontract is not in effect as of the Effective Date, Consultant shall provide to the State certificates showing Sub Consultant insurance coverage required under this Contract within seven Business Days following Consultant's execution of the subcontract. No later than 15 days before the expiration date of Consultant's or any Sub Consultant's coverage, Consultant shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Consultant shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. Breach Of Contract

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Consultant is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. Remedies

A. State's Remedies

If Consultant is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Consultant's uncured breach, the State may terminate this entire Contract or any part of this Contract. Consultant shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Consultant shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Consultant shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Consultant shall assign to the State all of Consultant's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Consultant shall take timely, reasonable and necessary action to protect and preserve property in the possession of Consultant but in which the State has an interest. At the State's request, Consultant shall return materials owned by the State in Consultant's possession at the time of any termination. Consultant shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Consultant for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Consultant was not in breach or that Consultant's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under §2.C.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Consultant shall remain liable to the State for any damages sustained by the State in connection with any breach by Consultant, and the State may withhold payment to Consultant for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Consultant is determined. The State may withhold any amount that may be due Consultant as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Consultant's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Consultant to an adjustment in price or cost or an adjustment in the performance schedule. Consultant shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State

shall not be liable for costs incurred by Consultant after the suspension of performance.

b. Withhold Payment

Withhold payment to Consultant until Consultant corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Consultant's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Sanctions and/or Liquidated Damages Pursuant to Attachment 1

e. Disqualification from Future Professional Service Proposals

f. Removal

Demand immediate removal of any of Consultant's employees, agents, or Sub Consultants from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

g. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Consultant shall, as approved by the State (i) secure that right to use such Work for the State and Consultant; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Consultant's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Consultant, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

C. Termination for Substantial Cause

State may terminate the Contract immediately without the required notice and without liability, including termination for costs, only for substantial cause. "Substantial Cause" shall mean the Consultant's insufficient, incorrect, improper activities or inaction by the Consultant.

D. Termination for Convenience

The State or the Consultant may terminate the Contract for convenience, by providing 30 days prior written notice thereof, without liability or obligation, at any time: a) before the State issues a Task Order and the Consultant starts performance of the Work under that Task Order; or b) after all effective Task Orders have been

completed and before the State issues a new Task Order and the Consultant starts performance of the Work under that new Task Order.

13. Dispute Resolution

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Consultant for resolution.

B. Resolution of Controversies

- i. If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation.
- ii. The decision of the Chief Engineer will be final and conclusive unless, within 30 days after the date of receipt of a copy of such written decision, the Consultant mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Consultant shall proceed diligently with the performance of the Contract in accordance with the Chief Engineer's decision.
- iii. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive.
- iv. This dispute clause does not preclude consideration of questions of law in connection with decisions provided above. Nothing in this Contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

14. Notices And Representatives

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal

representative by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

15. Rights In Work Product and Other Information

A. Work Product

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Consultant hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Consultant cannot make any of the assignments required by this section, Consultant hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patent Rights (Federal Funds)

If any invention, improvement, or discovery of the Consultant or any of its Sub Consultants is conceived or first actually reduced to practice in the course of or under this Contract Work, and if such is patent-able, the Consultant shall notify the State immediately and provide a detailed written report. The rights and responsibilities of the Consultant, Sub Consultants, and the State with respect to such invention, improvement, or discovery will be determined in accordance with applicable federal laws and regulations in existence on the date of execution of this Contract which define Consultant title, right to elect title, federal government "march in" rights, and the scope of the federal government's right to a nonexclusive, irrevocable, paid-up license to use the subject invention for its own. The Consultant shall include the requirements of this paragraph in its Sub Consultant contracts for the performance of the Work under this Contract.

iii. Rights in Data and Copyright (Federal Reserved Rights)

Except for its own internal use, the Consultant shall not publish or reproduce any data/information, in whole or part, that is recorded in any form or medium whatsoever and that is delivered or specified to be delivered under this Contract, nor may it authorize or permit others to do so, without the written consent of the federal government, through the State, until such time as the federal government may have released such data/information to the public. As authorized by 49 C.F.R. 18.34, the federal government, through the State,

reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize the State and others to use:

- a. any work developed under this Contract or a resulting Sub Consultant contract irrespective of whether or not it is copyrighted; and
- b. any rights of copyright to which a Consultant, or Sub Consultant purchases ownership with federal assistance.

iv. Assignments and Assistance

Whether or not Consultant is under contract with the State at the time, Consultant shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire. Consultant assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Consultant are shall be the exclusive property of the State (collectively, “**State Materials**”). Consultant shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Consultant’s obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Consultant shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Consultant

Consultant retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Consultant including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Consultant under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “**Consultant Property**”). Consultant Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: (i) entered into as exhibits to this Contract; (ii) obtained by the State from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

D. Identification of Documents

All final reports, plans, specifications and other documents completed as a part of this Contract, other than those exclusively used for internal use by the State, shall carry a notation on the front cover, title page, or title block identifying Colorado Department of Transportation. According to a format specified by the State, credits will be given to U.S. Department of Transportation, Federal Highway Administration and/or others.

16. General Provisions

A. Assignment

Consultant's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Consultant's rights and obligations approved by the State shall be subject to the provisions of this Contract.

B. Subcontracts

Consultant shall not enter into any subcontract in connection with its obligations under this Contract without providing written notice to the State. The State may reject any such subcontract, and Consultant shall terminate any subcontract that is rejected by the State and shall not allow any Sub Consultant to perform any Work after that Sub Consultant's subcontract has been rejected by the State. Consultant shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Consultant in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract. All subcontracts, exceeding \$250,000.00 in cost, shall contain the following provisions Payments, Section 5; Conflicts of Interest, Section 9; Insurance, Section 10; Breach of Contract, Section 11; Remedies, Section 12; Dispute Resolution, Section 13; Rights in Work Product and Other Information, Section 15; and Independent Contractor, Section 18.D.

C. Binding Effect

Except as otherwise provided in **§16.A**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. 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.

F. 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.

G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, 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.

H. Digital Signatures

If any signatory signs this Contract using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. 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. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. 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.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Consultant's or a Sub Consultant's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

L. 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.

M. Survival of Certain Contract Terms

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

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Consultant. Consultant shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Consultant may wish to have in place in connection with this Contract.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §17.A, 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.

P. 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.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Consultant shall perform its obligations under this Contract in accordance with the customary standards of care, skill and diligence in Consultant's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Consultant shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Sub Consultants secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

T. Indemnification

i. General Indemnification

Consultant 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 negligent act or omission by Consultant, or its employees, agents, Sub Consultants, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Consultant in violation of **§8** may be cause for legal action by third parties against Consultant, the State, or their respective agents. Consultant shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorney’s fees and costs) incurred by the State in relation to any negligent act or omission by Consultant, or its employees, agents, assigns, or Sub Consultants in violation of **§8**.

iii. Intellectual Property Indemnification

Consultant shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys’ fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work Product provided by Consultant under this Contract (collectively, “**IP Deliverables**”), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Consultant’s obligations hereunder shall not extend to the combination of any IP Deliverables provided by Consultant with any other product, system, or method, unless the other product, system, or method is (a) provided by Consultant or Consultant’s subsidiaries or affiliates; (b) specified by Consultant to work with the IP Deliverables; (c) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (d) is reasonably expected to be used in combination with the IP Deliverables.

iv. Accessibility Indemnification

Consultant shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, 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 Consultant’s failure to comply with §§24-85-101, *et seq.*, C.R.S., or the *Accessibility Standards for Individuals with a*

Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

U. Accessibility

- i. Contractor shall comply with the *Accessibility Standards for Individuals with a Disability*, as adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S.
- ii. The State may require that the Contractor's compliance with the *Accessibility Standards for Individuals with a Disability* adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S. is determined and tested by a qualified third party selected by the State. The State may ask the Contractor to review the selection of the third party. Contractor shall be responsible for all costs associated with the third-party vendor's assessment. If Contractor is not in compliance as determined by the third-party vendor, at the State's request and at the State's direction, Contractor shall promptly take all necessary actions to come into compliance using a State-approved vendor, at no additional cost to the State.

17. Nondiscrimination Provisions

During the performance of this Contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

- A. **Compliance with Regulations:** The Consultant will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. **Non-discrimination:** The Consultant, with regard to the work performed by it during the contract term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Sub Consultants, including procurement of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- C. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Sub Consultant or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- D. **Information and Reports:** The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information

required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant shall so certify to the State or the FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the Non-discrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: withholding payments to the Consultant under the contract until the Consultant complies; and/or cancelling, terminating, or suspending a contract, in whole or in part.
- F. Incorporation of Provisions: The Consultant will include the provisions of paragraphs one through six in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Consultant becomes involved in, or is threatened with, litigation with a Sub Consultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interest of the State. In addition, the Consultant may request the FHWA to enter into such litigation to protect the interests of the United States.

18. 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), C.R.S. 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

Consultant shall perform its duties hereunder as an independent contractor and not as an employee. Neither Consultant nor any agent or employee of Consultant shall be deemed to be an agent or employee of the State. Consultant shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Consultant 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 Consultant or any of its agents or employees. Consultant shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Consultant 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

Consultant 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 Consultant harmless; requires the State to agree to binding arbitration; limits Consultant'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. Consultant hereby certifies and warrants that, during the term of this Contract and any extensions, Consultant has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Consultant 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. Consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Consultant's services and Consultant 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 Consultant in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Consultant by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Consultant, or by any other appropriate method for collecting debts owed to the State.

19. Emerging Small Business (ESB)

The ESB goals for this project are set forth in the document, "Request for Proposals," from the solicitation materials included in CDOT RFX # _____, dated **publish date**, and is hereby incorporated into this Contract by reference. Please refer to **ATTACHMENT 1** for additional information regarding the ESB program requirements.

20. U.S. Small Business Administration Certifications

A. Certification Regarding Debarment, Suspension and Other Responsibility Matters-- Primary Covered Transactions -- Appendix A To Part 970 (5 C.F.R. 970.510)

Instruction for Certification

- i. By signing and submitting this Contract, the prospective primary participant (Consultant) is providing the certification set out below.
- ii. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant

- to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- iii. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to the other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
 - iv. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - v. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntary excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The prospective primary participant may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
 - vi. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
 - vii. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - viii. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
 - ix. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the participant is not required

to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

- x. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- xi. Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- xii. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

B. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions -- Appendix B To Part 970 (5 C.F.R. 970.510)

Instruction for Certification

- i. By signing and submitting this Contract, the prospective lower tier participant (Consultant) is providing the certification set out below.
- ii. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal

- Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- iii. The lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
 - iv. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntary excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. The lower tier participant may contact the person with which this proposal is submitted for assistance in obtaining a copy of those regulations.
 - v. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
 - vi. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
 - vii. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
 - viii. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - ix. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction

originated may pursue available remedies, including suspension and/or debarment.

- x. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions
 - a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transactions by any Federal department or agency.
 - b. Where the lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

21. Certification for Federal-Aid Contracts Regarding Lobbying Agents

The undersigned on behalf of the Consultant certifies, to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf or the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form SF-LLL, "disclosure form to report lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

22. Supplemental Federal Provisions FFATA Provisions

State of Colorado Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders Subject to The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended.

Revised as-of 3-20-13.

The contract, grant, or purchase order to which these Supplemental Provisions are attached may be funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the Contract or any attachments or exhibits incorporated into and made a part of the Contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. "Award" means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;

1.1.2. Contracts;

1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

1.1.12. Technical assistance, which provides services in lieu of money;

1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.14. Any award classified for security purposes; or

1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. "Contract" means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. "Consultant" means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Consultant does not include Vendors.

1.4. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.

1.5. "Entity" means all of the following as defined at 2 CFR part 25, subpart C;

- 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2. A foreign public entity;
- 1.5.3. A domestic or foreign non-profit organization;
- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. “Executive” means an officer, managing partner or any other employee in a management position.
- 1.7. “Federal Award Identification Number (FAIN)” means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. “Prime Recipient” means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. “Subaward” means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. “Subrecipient” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. “Subrecipient Parent DUNS Number” means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. “Supplemental Provisions” means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;

- 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
 - 1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
 - 1.17. “Vendor” means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.
2. Compliance. Consultant shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Consultant of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
 3. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.
 - 3.1. SAM. Consultant shall maintain the currency of its information in SAM until the Consultant submits the final financial report required under the Award or receives final payment, whichever is later. Consultant shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. DUNS. Consultant shall provide its DUNS number to its Prime Recipient, and shall update Consultant’s information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Consultant’s information.
 4. Total Compensation. Consultant shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

- 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Consultant received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Sub-awards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. Reporting. Consultant shall report data elements to SAM and to the Prime Recipient as required in §7 below if Consultant is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Consultant for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Consultant's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
 6. Effective Date and Dollar Threshold for Reporting. The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
 7. Sub-recipient Reporting Requirements. If Consultant is a Sub-recipient, Consultant shall report as set forth below.
 - 7.1. To SAM. A Sub-recipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
 - 7.1.1. Sub-recipient DUNS Number;
 - 7.1.2. Sub-recipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 7.1.3. Sub-recipient Parent DUNS Number;

- 7.1.4. Sub-recipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5. Sub-recipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6. Sub-recipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
- 7.2. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
 - 7.2.1. Sub-recipient's DUNS Number as registered in SAM.
 - 7.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
8. Exemptions
 - 8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
 - 8.2. A Consultant with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
 - 8.3. Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
 - 8.4. There are no Transparency Act reporting requirements for Vendors.
9. Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT A STATEMENT OF WORK

EXHIBIT B RATES SCHEDULE AND PAYMENT TERMS

METHOD OF COMPENSATION: Payment Type
FIXED FEE: 0.00%

PART I - PAYMENT TERMS

Consultant has a current Master Pricing Agreement (MPA) subject to annual adjustments per the terms of that contract and a current established Indirect Cost Rate of 0.00%

Sub Consultants have Master Pricing Agreements (MPAs) that are subject to annual adjustments per the terms of those contracts.

Consultants that have an established Indirect Cost Rate, the applicable Direct Salary Rates shall be multiplied by the Consultant's Indirect Cost Rate factor as established in the current MPA . Project Cost Worksheets submitted as part of the Task Order process detailed in Section 4. Statement of Work and Task Orders attached as Exhibit B, Part II, Section 1B, "Labor Costs" will provide for a subtotal for the actual number of labor hours actually worked by Consultant employees, with a total of all billable labor rates.

Sub Consultants without an established Indirect Cost Rate will bill according to the established fee schedule.

COST PLUS FIXED FEE

Cost Plus Fixed Fee method of payment shall be used for all Task Order work not specifically described below in Specific Rate of Pay.

The total of all billable labor rates shall be multiplied by the Fixed Fee as contained in Exhibit B Rates Schedule and Payment Terms.

SPECIFIC RATE OF PAY

SROP Payment method is calculated using the following formula:

Labor Rate = Direct Labor Rate x Multiplier, where Multiplier is (Indirect Rate + Fixed Fee + 1)

The SROP payment method shall not be used for Task Order work unless (1) the nature of the work directed is appropriate to SROP payment method (such as construction management services, research & development, and staffing support services); (2) the payment method is approved by the CDOT Project Manager and Contracting Officer; and (3) the payment method is reflected in the Task Order cost proposal at the time of execution.

Part I - Payment Terms

For Consultant and all Sub Consultants except where specifically noted:

Principals, VP, Owners, Field Technician Administrative	Principals, et al. performing similar work to a particular labor classification, i.e. Project Manager, Sr. Engineer, Sr. Inspector, etc. will bill at the same rate for the labor classification rather than any principal rate. Applicable Indirect Field Rates shall be used for work performed on project site locations as Field Inspectors, Testers and Technicians.
Per Diem	Only when on overnight Travel Status, approved by CDOT PM at actual reasonable cost not to exceed per meal, per diem rates and/or limitations allowed for State employees by the State Fiscal Rules. *No receipts required *
Postage: Express Mail Courier	Project related. For major mailings only. At actual, allowable reasonable cost. (Must be verified with receipts.)
Long Term Project Travel	For employees on a Long Term Project, CDOT may compensate for travel time and mileage for each person assigned to the project for travel between the project and the person's home base. All time and mileage shall be approved by the CDOT Project Manager for the same period in which the travel occurred.
Mileage:	Current State Government Rates.
Lodging	For lodging, such rates shall be built into the Consultant's proposal for each Task Order. Lodging rates shall be verified by the CDOT Business Office at actual up to the maximum GSA CONUS rate for the area of travel. (Must be verified with receipts)
Miscellaneous	Project related, approved by CDOT Project Manager at actual, reasonable cost in accordance with state fiscal rules.

1. For the satisfactory performance of the Work described in Exhibit A, the State agrees to pay and the Consultant agrees to accept payment on the basis of its cost plus a fixed fee (**CPFF**), provided, however, that some Consultant costs shall be based on a specific rate of pay (**SRP**) to the extent they are shown as such in the Consultant's cost proposal and approved in advance by CDOT.
2. Task Orders shall not be allowed to use multiple payment methods and may not be converted after Work has commenced, unless approved by the State Controller or designee prior to Work commencing.
3. The Consultant's Allowable Rates are shown in the current MPA..
 - A. The Allowable Rates shall include actual direct labor costs and actual other direct costs as determined from the Consultant's records and the fixed indirect cost rate established herein; and actual Sub Consultant costs. Actual Sub Consultant costs are defined as the costs incurred by a Sub Consultant which are in compliance with the same regulations as the Consultant. Provided, however, that some Sub Consultant costs shall be based on a specific rate of pay to the extent they are shown as such in the Consultant's cost proposal and approved in advance by CDOT.
 - B. The actual direct labor costs shall be the labor costs for Consultant personnel during the time they are productively engaged in Work necessary to fulfill the terms of this Contract. Current salary rates for Consultant personnel currently anticipated to be engaged in the Work are shown in the current MPA.
 - C. Any changes in such rates and rates of reimbursement for any additional personnel which may be required during the term of this Contract shall be only as requested in writing by the Consultant and as approved in writing as evidenced by the executed Master Pricing Agreement Option Letter. No Services shall be provided by the additional employee until the Option Letter is executed.
 - D. The other direct costs are those types of costs allowed in the Consultant's final cost proposal directly incurred in fulfilling the terms of this Contract. Rates of reimbursement for currently anticipated other direct costs shall be as shown in the Project Cost Worksheets attached to a Task Order. Any changes in such rates

and rates of reimbursement for any additional other direct costs which may be required during the Term of this Contract shall be only as requested in writing by the Consultant and as approved by the Parties on a Reallocation Form.

- E. The Sub Consultant and vendor costs are those allowable costs incurred by a Sub Consultant and/or vendor. Consultant payment to Sub Consultants and/or vendor shall be in accordance with and shall not exceed the Sub Consultant and/or vendor cost proposal attached to a Task Order. Any adjustments to the original Task Order's cost proposal amounts shall be approved by the Parties on a Reallocation Form in advance. Some Sub Consultant and/or vendor costs shall be based on a SROP to the extent they are shown as such in the Consultant's cost proposal and approved in advance by CDOT. Consultant payment to Sub Consultants and/or vendors shall also be made subject to the same regulations that are applicable to the Consultant costs under this Contract. Any such outside services or vendors used shall be selected through a competitive bid process consistent with that described in Title 49, Code of Federal Regulations, section 18.36 (d), and they shall be paid at actual reasonable invoice cost. The Consultant and/or Sub Consultants shall not be paid a surcharge on the cost of outside services and/or vendors.
- F. For CPFF Task Orders, the fixed fee, which represents the Consultant's profit, shall be a fixed dollar amount, as agreed to by the State and the Consultant, and included in the Consultant's cost proposal for each Task Order issued under this Contract. The fixed fee payment will be prorated and paid regularly in proportion to the Work performed as reflected by the periodic invoices.
- G. For SROP Task Orders, the SROP multiplied by the number of hours actually worked plus the other direct costs shall be all the compensation due the Consultant for the full performance of the Work under this Contract.
- H. The total compensation due the Consultant for the full performance of the Work described in Exhibit A shall be the sum of the actual direct labor costs, the indirect costs, other direct costs, and Sub Consultant costs, as determined by final audit within three years of the final billing for Consultant services, and a fixed fee.

- I. The State shall retain approval authority over all reimbursable cost items incurred under this Contract.
- J. During the progress of the Work, the Consultant shall monitor the costs it incurs in the performance of each Task Order written under this Contract. If the Consultant determines, based upon Consultant's monitoring of costs, that the Work on a Task Order cannot be concluded within the estimated maximum cost for that Task Order, the Consultant shall immediately notify the State, in writing, of such determination and, after consultation with the State, shall cease Work before the costs exceed the estimated maximum cost for that Task Order.
- K. If the Parties agree that additional cost items are necessary to complete the existing scope of work for that Task Order, without modification of that scope of work, the Consultant shall be paid for the reimbursable cost items necessary for such additional Work; however, in the absence of a modification of that scope of work resulting in the addition of work items not previously included in that scope of work, the fixed fee for that Task Order shall not be increased.
- L. If, after consultation between the Consultant and the State, the Parties agree to modify the scope of work for a Task Order to include additional work items not previously included in that scope of work, the Task Order shall be amended to include such additional Work, and the Consultant shall be paid for the reimbursable cost items necessary for such additional Work. Where the scope of work is modified to include additional Work items not previously included in that scope of work, the fixed fee may be increased, by execution of the modification to the Task Order, to cover the new work items.
- M. In no event shall the Consultant's costs exceed the "not to exceed" amount of a Task Order issued under this Contract until the State supplements such Task Order by a change in funding, a change in work program, or a combination of both without the benefit of a supplemental contract, or other appropriate contract modification tool, executed before the work or cost to be covered in such a supplement is performed or incurred.
- N. The approved prime and sub-consultants that have a current MPA at the time of

execution and will maintain a MPA during the life of the contract are:

O. The approved vendors for this contract are:

PART II - PROJECT COST WORKSHEETS DOCUMENTS

EXHIBIT C MODIFICATION DOCUMENTS

EXHIBIT C-1

TASK ORDER No. _

State Agency Colorado Department of Transportation and Statewide Bridge and Tunnel Enterprise	Main Task Order Contract Number/OLA Insert Contract Smart Number of the Main Task Order Contract Insert Contract OLA Number
Consultant Insert Consultant's Full Legal Name, including "Inc.", "LLC", etc...	Main Task Order Contract Term Month, Day, Year to Month, Day, Year
Task Order Maximum Amount \$ 0.00	Task Order Contract Number Insert Smart Number of this Task Order
SAP PO # Insert SAP PO # of TO	
Task Order Performance Beginning Date Task Order Effective Date	Task Order Expiration Date Month Day, Year
Compensation Method CPFF/SROP/Lump Sum	SAP Sub-Account Project # XXXXX

Main Task Order Contract Description Location, Contract Compensation Method and Work Type
Task Order Description Project Scope of Work Description

In accordance with **§6.B/I.D** of the Main Task Order Contract referenced above,
 Consultant shall complete the following Project:

1. **PROJECT DESCRIPTION**

Consultant shall complete the Project described in Scope of Work and Project Cost Worksheets that are attached hereto and incorporated herein (the "Proposal"). All terminology used in this Task Order and the Proposal shall be interpreted in accordance with the Main Task Order Contract unless specifically defined differently in this Task Order. In the event of any conflict or inconsistency between this Task Order and the original Main Task Order Contract, such conflict or inconsistency shall be resolved by reference to these documents in the following order: Special Provisions, original Main Task Order Contract, attachments/exhibits to the original Main Task Order Contract, this Task Order, then attachments/exhibits to this Task Order.

2. **PAYMENT**

The State shall pay Consultant the amounts shown in the Proposal in accordance with the requirements of that Proposal and the Main Task Order Contract. The State shall not make any payment that exceeds the Task Order Maximum Amount shown above.

3. **PERFORMANCE PERIOD**

Consultant shall complete all Work on the Project described in this Task Order by the Task Order Expiration Date stated above. Consultant shall not perform any Work on the Project described in the Proposal prior to the Task Order Performance Beginning Date or after the Task Order Expiration Date stated above.

4. **TASK ORDER EFFECTIVE DATE:**
The effective date of this Task Order is upon approval of the State Controller.

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SIGNATURE PAGE

<p>CONSULTANT INSERT-Legal Name of Consultant</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation Shoshana M. Lew, Executive Director</p>
<p>By: Name & Title of Person Signing for Consultant Date: _____</p>	<p>By: Keith Stefanik P. E., Chief Engineer Date: _____</p>

In accordance with §24-30-202 C.R.S., this Task Order is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Task Order Effective Date: _____

EXHIBIT C-2

AMENDED TASK ORDER No. ___ TIME EXTENSION

State Agency Colorado Department of Transportation and Statewide Bridge and Tunnel Enterprise	Main Task Order Contract Number/OLA Insert Smart Number of the Main Task Order Contract Insert Contract OLA Number
Consultant Insert Consultant's Full Legal Name, including "Inc.", "LLC", etc...	Main Task Order Contract Term Month, Day, Year to Month, Day, Year
Task Order Maximum Amount \$ 0.00	Amended Task Order Contract Number Insert Smart # of this Amended Task Order
SAP PO # Insert SAP PO # of TO	Task Order Performance Beginning Date Month Day, Year
Task Order Expiration Date Being Amended Month Day, Year	Amended Task Order Expiration Date Month Day, Year
Compensation Method CPFF/SROP/Lump Sum	SAP Sub-Account Project # XXXXX

In accordance with §6.B/I.D of the Main Task Order Contract referenced above,
 Consultant shall complete the following Project:

5. **PROJECT DESCRIPTION**

The Consultant shall continue to perform the tasks in accordance with the original Task Order and the original Proposal and the new attached Consultant letter requesting an extension ("Amended Proposal"), all of which are hereby incorporated by reference. All terminology used in this Amended Task Order and the Amended Proposal shall be interpreted in accordance with the Main Task Order Contract unless specifically defined differently in this Task Order or Amended Task Order. In the event of any conflict or inconsistency between this Amended Task Order and the original Main Task Order Contract, such conflict or inconsistency shall be resolved by reference to these documents in the following order: Special Provisions, original Main Task Order Contract, attachments/exhibits to the original Main Task Order Contract, this Amended Task Order, attachments/exhibits to this Amended Task Order, then the original Proposal.

6. **PAYMENT**

The State shall pay Consultant the amounts shown in the Proposal in accordance with the requirements of the original Proposal and the Main Task Order Contract. The State shall not make any payment that exceeds the Task Order Maximum Amount shown above.

7. **PERFORMANCE PERIOD**

Consultant shall complete all Work on the Project described in this Task Order, as amended by the Amended Proposal, by the Amended Task Order Expiration Date stated above. Consultant shall not perform any Work on the Project described in the Proposal prior to the Task Order Performance Beginning Date or after the Amended Task Order Expiration Date stated above.

8. **AMENDED TASK ORDER EFFECTIVE DATE:**
The effective date of this Amended Task Order is upon approval of the State Controller.

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SIGNATURE PAGE

STATE OF COLORADO
Jared S. Polis, Governor
Colorado Department of Transportation
Shoshana M. Lew, Executive Director

By: _____
Keith Stefanik P. E., Chief Engineer

Date: _____

In accordance with §24-30-202 C.R.S., this Amended Task Order is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Task Order Effective Date: _____

EXHIBIT C-3

AMENDED TASK ORDER No. ___

State Agency Colorado Department of Transportation and Statewide Bridge and Tunnel Enterprise	Main Task Order Contract Number/OLA Insert Smart Number of the Main Task Order Contract Insert Contract OLA Number
Consultant Insert Consultant's Full Legal Name, including "Inc.", "LLC", etc...	Main Task Order Contract Term Month Day, Year to Month Day, Year
Task Order Maximum Amount Being Amended \$ 0.00	Amended Task Order Maximum Amount \$0.00
Task Order Performance Beginning Date Month Day, Year	Amended Task Order Contract Number Insert Smart # of this Amended Task Order
Task Order Expiration Date Being Amended Month Day, Year	Amended Task Order Expiration Date (if applicable) Month Day, Year
Compensation Method CPFF/SROP/Lump Sum	SAP Sub-Account Project # XXXXX
Amended Task Order Description Add Funds or Add Funds and Time Extension	SAP PO # Insert SAP PO # of TO

In accordance with **§6.B/I.D.** of the Main Task Order Contract referenced above, Consultant shall complete the following Project:

9. PROJECT DESCRIPTION

Consultant shall continue to perform the tasks in accordance with the original Task Order and the original Proposal and the new attached Scope of Work, Project Cost Worksheets and/or Consultant letter (collectively, the "Amended Proposal"), all of which are incorporated by reference. All terminology used in this Amended Task Order and the Amended Proposal shall be interpreted in accordance with the Main Task Order Contract unless specifically defined differently in this Task Order or Amended Task Order. In the event of any conflict or inconsistency between this Amended Task Order and the original Main Task Order Contract, such conflict or inconsistency shall be resolved by reference to these documents in the following order: Special Provisions, original Main Task Order Contract, attachments/exhibits to the original Main Task Order Contract, this Amended Task Order, attachments/exhibits to this Amended Task Order, then the original Proposal.

10. DESCRIPTION OF CHANGE

The purpose of this Amended Task Order is to [add funds/add funds and time] to the Task Order, for the reasons stated in Attachment 1. [The amount of the Task Order is increased/decreased by \$].

11. PAYMENT

The State shall pay Consultant the amounts shown in the original Proposal, as amended by the Amended Proposal, in accordance with the requirements of the original Proposal, as amended by the Amended Proposal, and the Main Task Order Contract. The State shall not make any payment that exceeds the Amended Task Order Maximum Amount shown above.

12. **PERFORMANCE PERIOD**

Consultant shall complete all Work on the Project described in this Task Order, as amended by the Amended Proposal, by the Amended Task Order Expiration Date stated above. Consultant shall not perform any Work on the Project described in the Amended Proposal prior to the Amended Task Order Effective Date or after the Amended Task Order Expiration Date stated above.

13. **AMENDED TASK ORDER EFFECTIVE DATE:**

The effective date of this Amended Task Order is upon approval of the State Controller.

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SIGNATURE PAGE

<p>CONSULTANT INSERT-Legal Name of Contractor</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Colorado Department of Transportation Shoshana M. Lew, Executive Director</p>
<p>By: Name & Title of Person Signing for Consultant Date: _____</p>	<p>By: Keith Stefanik P. E., Chief Engineer Date: _____</p>

In accordance with §24-30-202 C.R.S., this Amended Task Order is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Task Order Effective Date: _____

EXHIBIT D CONSULTANT PERFORMANCE EVALUATION

ATTACHMENT 1 ESB REQUIREMENTS

CDOT Professional Services Civil Rights Requirements for Project Specific (PS)/Program Specific (PGS) Contracts

All parties included in the performance of work on the Contract shall comply with the terms of the Solicitation for Professional Consultant Services instructions. The following requirements shall apply to all FHWA-assisted contracts and subcontracts.

I. Definitions

B2Gnow. Web based platform utilized by CDOT to track prompt payment requirements on its contracts.

Consultant. An individual, firm, corporation, or other legal entity with a direct contractual relationship with CDOT to render Professional Services and ancillary services. This party is responsible for the performance of the work.

Contract. Agreement between CDOT and the Consultant, whereby the Consultant shall be compensated in exchange for providing Professional Services and ancillary services. The agreement includes all attached exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities and any future modifications thereto.

Engineer. The licensed person acting directly or through an authorized representative, who is responsible for engineering and administrative supervision of the project.

Subconsultant. An individual, firm, corporation or other legal entity to whom the Consultant sublets part of the contract. For purposes of these requirements, the term subconsultant includes Suppliers/Vendors. It is a party, if any, engaged by a consultant to aid in performance of the work which provides consultant services.

Vendor. Participant on a CDOT contract that is providing services not considered to be a Professional Services as defined in Colorado Revised Statute 24-30-1402.

II. Nondiscrimination and Subcontracting Requirements

A. Non-discrimination. The Consultant, with regard to the work performed by it during the Contract term, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

B. Consultant Assurance. By submitting a proposal for this Contract, the Consultant agrees to the following assurance:

1. The Consultant, Subrecipient, or Subconsultant must not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract.
2. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts.
3. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, or other such remedy as CDOT deems appropriate, which may include, but is not limited to:
 - a. Withholding monthly progress payments
 - b. Assessing sanctions/disincentives

CDOT Professional Services Civil Rights Requirements for Project Specific (PS)/Program Specific (PGS) Contracts

- c. Liquidated damages, and/or
- d. Disqualifying the Consultant from future bidding as non responsible.

C. Prompt Payment. Payments to all Subconsultants shall be made within seven (7) calendar days of receipt of payment from CDOT or no later than thirty (30) calendar days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first, as outlined in CFR Part 26.29.

1. If the Consultant or its Subconsultant fail to comply with this provision, the Engineer acting directly or through an authorized representative, who is responsible for engineering and administrative supervision of the project shall not authorize further progress payment for work performed directly by the Consultant or the noncompliant Subconsultant until the required payments have been made or CDOT determines that there is sufficient good cause to delay payment.

2. The Engineer shall continue to authorize progress payments for work performed by compliant Subconsultants.

3. If the Consultant or Subconsultant payor believes it has good cause to delay or withhold a subconsultant's progress payment, the Consultant shall notify the Subconsultant in writing no later than the required date for payment.

a. Such notification shall include the amount to be withheld, justification for the withholding, and what conditions the Subconsultant must meet to receive payment. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants.

b. The Consultant and all Subconsultant payors shall electronically submit prompt payment audit reports in B2Gnow by the fifteenth (15th) of each month through the B2Gnow software.

c. If no payment has been made, the Consultant shall document this in the prompt payment audit reporting and upload the submitted good cause information B2Gnow.

D. Subcontract Terms. The assurances of parts "A-B" of this section shall be included in all subcontracts or other agreements for the performance of work on the contract.

III. Scoring

In evaluating the most qualified proposer, a maximum of ten (10) points may be awarded based upon a variety of factors. Points shall be allocated using the Civil Rights Scoring Rubric, which can be found at:

<https://www.codot.gov/business/civilrights/assets/assets/scoring-rubric>.

**COLORADO DEPARTMENT OF TRANSPORTATION
CONSULTANT CERTIFICATION**

Consultant Firm Name	
Consultant Firm Complete Address	
Authorized Representative Name and Title (print)	Title
_____	_____
<p>I certify that neither I nor the above firm has:</p> <ul style="list-style-type: none">- employed or retained for a commission, percentage, brokerage, gift, contingent fee or other consideration, any firm or person (other than a bonafide employee working solely for me or the above consultant) contingent upon or resulting from the award or making of this contract, or to solicit or secure this contract:- agreed as a known or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; or- paid, or agreed to pay, to any firm, organization, or person (other than a bonafide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract. <p>I further certify that:</p> <ul style="list-style-type: none">- wage rates and other factual unit costs supporting the compensation to be paid under this contract are accurate, complete, and current. <p>I acknowledge that this certificate is to be furnished to the Colorado Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.</p> <p>I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS THAT THE STATEMENTS MADE ON THESE DOCUMENTS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.</p>	
Firm Representative Signature	Date
_____	_____

CERTIFICATION OF THE COLORADO DEPARTMENT OF TRANSPORTATION

<p>I certify that I am the duly authorized representative of the Colorado Department of Transportation and, that the above Consulting firm or its representative has not been required, directly or indirectly as a known or implied condition in connection with obtaining or carrying out this contract to:</p> <ul style="list-style-type: none">- employ or retain, or agree to employ or retain, any firm or person; or- pay, or agree to pay, any firm, person, or organization, any fee, contribution, donation, or consideration of any kind. <p>I acknowledge that this certificate is to be furnished the Federal Highway Administration, U.S. Department of Transportation, in connection with this contract involving participation of Federal Aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.</p>	
CDOT Representative Signature and Title	
_____	_____
Keith Stefanik, PE Chief Engineer	Date