



COLORADO

Transportation Investment Office

REQUEST FOR PROPOSAL

SUBMISSION DEADLINE: March 17, 2022

Proposals submitted to: CTIO; 2829 W. Howard Place, 5th Floor; Denver, CO 80204

NOTE: Vendors delivering their proposal in person must check into the CDOT's Headquarters Building before being allowed to proceed to the **fifth floor** to submit their proposals. Vendors should allow approximately 10 minutes in advance of proposal deadline for the check-in procedure. CTIO reserves the right to reject any and all proposals or parts thereof, and to waive informalities or irregularities. By submission of a proposal, vendor agrees to the State of Colorado terms and conditions.

Tolling Back Office Procurement Counsel

The Colorado High-Performance Transportation Enterprise, doing business as the Colorado Transportation Investment Office (CTIO), a division of the Colorado Department of Transportation (CDOT), is requesting proposals from a qualified law firm interested in providing tolling back-office procurement legal services for CTIO activities for the next five (5) years concluding on or around December 31, 2026.

Attorneys providing services under the contract must be licensed to practice law in Colorado or are associated (in your firm or otherwise) with attorneys licensed to practice law in the State of Colorado. Attorneys shall not engage in the unauthorized practice of law pursuant to applicable rules of professional conduct. The selected attorneys may also be designated as Special Assistant Attorneys General with the Department of Law and will work closely with representatives of the Office of the Attorney General.

Read this Request for Proposal (RFP) thoroughly before responding. Telegraphic or electronic bids (Fax, Western Union, Telex, etc.) cannot be accepted as a sealed bid. Illegible responses may be rejected as non-responsive.

CTIO reserves the right to reject any and all bids or parts thereof, and to waive informalities or irregularities. By submission of a bid, Contractor agrees to the State of Colorado terms and conditions.

By submission of a proposal, bid or quote, Contractor agrees as follows:

- Except as replaced, modified, or supplemented by CTIO for this solicitation, all items in the State of Colorado Solicitation Instructions/Terms and Conditions are considered part of, and are incorporated by reference into this document.
- Contractor testifies that bid prices were arrived at independently and there was no collusion involved.
- The Contractor guarantees to the State that they understand and agree to the terms and conditions of this RFP and that they will not default from performance by virtue of a mistake or misunderstanding. Contractors shall seek clarification from CTIO of any specifications, terms and/or conditions that they determine to be unclear. The failure of a Contractor to seek clarification may be deemed a waiver of any such clarification.
- Low tie bids shall be decided in accordance with the provision of C.R.S. Section 24-103-202.5, as it currently exists or is hereafter amended, which gives a preference to resident Contractors. Any Contractor who wishes to be considered a "resident Contractor" for purposes of the tie bid procedure provided in C.R.S. Section 24-103-202.5 shall include with their bid, proof that they meet the definition of resident Contractor as set forth in either C.R.S. Section 24-103-101(6)(a) or C.R.S. Section 24-103-101(6)(b).

- Pursuant to CRS 24-30-202.4 (as amended), the State controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 22, Title 39, CRS; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.
- ***This award shall be available primarily for use by CTIO. Other State Agencies and Institutions, and Local Governments and Political sub-divisions in the State of Colorado may be allowed to access use of this award ONLY if approved by State Purchasing and such use does not conflict with the work required under any contract with CTIO.***

All proposals must be submitted on this form and signed in ink by an authorized officer or agent of the firm.

Vendor Name _____	Signature _____
Vendor _____	Address _____
Name(Print) _____	Title _____
City, State, Zip _____	Date _____
Vendor Phone _____	Fax _____
	F.E.I.N./SSN _____

NOTE: Results will be posted on the CTIO web site and/or sent via postal system but will not be discussed by phone except as noted in the RFP document.

REQUEST FOR PROPOSAL COLORADO TRANSPORTATION INVESTMENT OFFICE

SECTION 1 ADMINISTRATIVE INFORMATION

1.1 ISSUING OFFICE:

This request for proposal is issued for the State of Colorado by the Colorado Transportation Investment Office (CTIO). All contact regarding this Request for Proposal (RFP) is to be directed to:

Mrs. Kelly Brown, Tolling Operations Manager
Colorado Transportation Investment Office
2829 W. Howard Place, 5th Floor
Denver, CO 80204
(303) 877-4005
kelly.brown@state.co.us

1.2 PURPOSE:

The purpose of this RFP is to obtain competitive bid proposals from qualified law firms interested in providing tolling back office procurement services generally for CTIO activities for the next five (5) years.

This RFP provides prospective proposers (also referred to as “Contractor”) with sufficient information to enable them to prepare and submit proposals for consideration by CTIO to satisfy the needs as outlined in the Scope of Work.

1.3

SCHEDULE OF ACTIVITIES:	DATE	TIME (MST)
A. RFP Published on CTIO Website	FEB. 16	2PM
B. Prospective Proposers' Inquiry Deadline	FEB. 23	4PM
C. Response to Proposer Questions	MAR. 4	4PM
D. PROPOSAL SUBMISSION DEADLINE	MAR. 17	4PM
E. Evaluation of Proposals	MAR. 17 – 28	N/A
F. Top Consultants Selected and Notified of Interview (estimate) <i>if determined necessary.</i>	MAR. 29	4 PM
G. Interviews with short list of Consultants (estimate), <i>necessary.</i>	APRIL 5	9AM
H. Consultant Selection (estimate)	APRIL 6	12PM

1.4 PROPOSAL SUBMISSION:

All proposals must be received by CTIO, 2829 W. Howard Place, 5th Floor, Denver, CO 80204, no later than the date and time shown in the Schedule of Activities, Proposal Submission Deadline for receipt of proposals. Each proposal shall consist of **one (1) original** (identified as such) and **four (4) copies** of the proposer's complete proposal. In addition, one complete copy of the proposal shall be submitted in electronic format (via protected PDF) via Google Drive. It is the responsibility of the proposer to ensure that their proposal is received by CTIO prior to the deadline. Proposers mailing their documents should allow ample mail delivery time to ensure timely receipt of their proposals. PROPOSALS RECEIVED AFTER THE ABOVE DATE AND TIME WILL NOT BE CONSIDERED. Proposals must be clearly identified as a proposal for **CTIO Tolling Back Office Procurement Counsel** and shall show such information on the **outside** of the proposal packet. Proposals will not be accepted by facsimile or electronic mail transmittal.

Proposals shall not be longer than fifteen (15) pages, not including the covers, index, tab sheets, required forms or certifications, resumes and appropriate appendices.

Proposers are advised that CTIO desires that proposals prepared in response to this RFP be submitted on recycled paper, and that all copies be printed on both sides of paper. While the appearance of proposals is important, and professionalism in proposal presentation should not be neglected, non-recyclable, non-recycled glossy materials and clear plastic covers shall not be used. **In addition, proposals should be in flat bound form to facilitate filing.**

PLEASE NOTE: Proposals submitted in loose-leaf binders or 3-ring binders will NOT be accepted.

1.5 INQUIRIES:

Prospective proposers may make written inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date(s) and time(s) specified in the Schedule of Activities, Section 1.3. Questions must be submitted in writing on the proposer's letterhead to:

Mrs. Kelly Brown, Tolling Operations Manager
Colorado Transportation Investment Office
2829 W. Howard Place, 5th Floor
Denver, CO 80204
(303) 877-4005
kelly.brown@state.co.us

All envelopes containing questions must be clearly labeled "**Inquiry for CTIO Tolling Back Office Procurement Counsel**" to facilitate handling and distribution. Inquiries sent by fax will be accepted (fax number (303) 757-9656). Email inquiries must be clearly identified and marked "**Inquiry for CTIO Tolling Back Office Procurement Counsel**" in the Subject Line. An addendum will be published onto the CTIO website, at <https://www.codot.gov/programs/hpte/procurement/procurement>, responding to questions submitted regarding this RFP.

1.6 AMENDMENTS TO RFP:

In the event it should be necessary to revise any portion of this RFP, addenda will be published on the CTIO website. It is the prospective proposer's sole responsibility to monitor the internet site, at <https://www.codot.gov/programs/hpte/procurement/procurement>, and to acknowledge and/or comply with all addenda to this RFP.

1.7 RESPONSE MATERIAL OWNERSHIP:

All material submitted pursuant to this RFP becomes the property of the State of Colorado. Proposals may be reviewed by any person after the "Notice of Intent to Make an Award" letter has been issued, subject to the terms of Section 24-72-201 et. seq., C.R.S., as amended.

1.8 PROPRIETARY INFORMATION:

All material submitted in response to this RFP may become public record and may be subject to inspection after CTIO executes a contract with the preferred proposer. Any material requested for treatment as proprietary and/or confidential must be clearly identified and easily separable from the rest of the proposal. Such request must include justification for the request. The request will be reviewed and either approved or denied by the CTIO Director. If denied, the proposer will have the opportunity to withdraw its entire proposal, or to remove the proprietary restrictions. Refer to Section 1.32 of this RFP for submission of Confidential/Proprietary information.

1.9 REJECTION OF PROPOSALS:

CTIO reserves the right to reject any or all proposals received in response to this RFP, or to cancel this RFP if it is in the best interest of the State to do so. Failure to furnish all information or to follow the proposal format, requested in this RFP may disqualify the proposal. Any exceptions to the Scope of Work must be clearly identified and supported in the proposal. Inclusion of such exceptions does not guarantee acceptance by CTIO of such variation, and may instead lead to rejection of the proposal as non-responsive.

In the event that award is NOT made to any proposer, or CTIO cancels the RFP solicitation, all received proposals must remain confidential and not open for public inspection. The purpose for this condition is to prevent any future potential proposers an opportunity to review other bidders' proposals and thereby gain any unfair advantage in submitting future proposals.

Any cancellations occurring before the submittal due date will be returned unopened to the appropriate bidder with a notice of cancellation letter.

1.10 ORAL PRESENTATION/SITE VISITS:

Proposers *may* be asked to make oral presentations, and participate in a question and answer period conducted by the evaluation committee, to insure that the proposers have the abilities offered in their proposal, to provide the services solicited specifically by CTIO and, potentially, other State agencies. The *optional* oral presentation stage of the RFP selection process is designed solely for the benefit of the evaluation committee towards assisting it in making a final proposal selection. Oral presentations will be conducted at the sole discretion of the committee, and be at the proposer's expense. If invited to make a presentation, the proposer should be prepared to answer any possible questions of clarification related to the RFP requirements or the proposal submitted in response to this RFP solicitation. If invited to make an oral presentation, proposer must ensure attendance by those primary staff members anticipated to provide services under any resulting contract, and any other personnel identified by CTIO at the time of invitation.

1.11 PARENT COMPANY:

If a proposer is owned or controlled by a parent company, the name, main office address and parent company's tax identification number must be provided in the proposal.

1.12 EVALUATION CRITERIA:

An evaluation will be made by a committee to determine the merit of proposals received in accordance with the evaluation criteria defined herein. The recommendations of this group will be forwarded to the CTIO Director for approval.

1.12.1 Failure of the proposer to provide in their proposal any information requested in this RFP may result in disqualification of the proposal and shall be the responsibility of the proposing individual or firm.

1.12.2 During the evaluation process, discussions may be conducted with proposers who submit proposals determined to be realistic candidates for the award. It will be the recommendation of the evaluation committee if discussions for clarification are needed, based on their experience with application of these services to CTIO specific projects.

1.12.3 The sole responsibility of the committee will be to recommend the bidders whose proposal is most responsive to the State's needs while within the available resources. The specifications within this RFP represent the minimum performance necessary for response.

1.12.4 Specific evaluation criteria are outlined in Section 3 entitled Evaluation Criteria.

1.13 PROPOSAL CONTENT / ACCEPTANCE OF RFP TERMS:

A proposal submitted in response to the RFP shall constitute a binding offer. Acknowledgment of this condition shall be indicated by the autographic signature of the proposer, or an officer of the proposer legally authorized to execute contractual obligations. A submission in response to the RFP acknowledges acceptance by the proposer of all terms and conditions including compensation, as set forth herein. Proposer shall identify clearly and thoroughly any variations between its proposal and the RFP. Failure to do so shall be deemed a waiver of any rights to subsequently request modification of the terms of performance, except as outlined or specified in the RFP.

1.14 PROVISION FOR REQUIRED INSURANCE:

Award of a contract will be contingent upon the successful proposer submitting certificates of insurance in accordance with the provisions of the attached Provision for Required Insurance, provided in the Sample Contract, Attachment B to this RFP.

1.15 CONSULTANT CERTIFICATION:

Proposers must submit a signed Consultant Certification Form with their proposal, provided as Attachment A to this RFP.

1.16 CONFLICT OF INTEREST:

By submission of a proposal, proposer agrees that, at the time of contracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services. The proposer shall further covenant that, in the performance of the contract, they shall not employ any person having any such known interest. Any firm affiliated or related to an employee of Transportation Commission, the CTIO Board, or CTIO shall be ineligible to submit a proposal for the required services.

1.17 PROPOSAL PRICES:

Proposed cost information must include, at a minimum, rates associated with each staff position anticipated to work on this Project and any/all overhead multipliers. Although proposers are not asked to provide binding, specific costs at this time, they are urged to submit prices reflective of as accurate and reasonable a prediction of estimated costs as possible based upon the scope of work described in this RFP and the estimate of staff time required to complete. CTIO anticipates negotiating with the successful bidders through the task order process. This will result in final details for each task order in areas such as a detailed work plan, a delivery schedule, the specific work product(s) and compensation amounts which may include a success fee component. Proposers are alerted that any revisions, including costs, will be closely evaluated by the committee and /or licensed professional, to insure the elimination of any inequities and unacceptable conditions. In addition, proposers are advised that if, in the course of performance of a contract resulting from this RFP solicitation, any travel or per diem is required, those costs will be reimbursed at the rates outlined in the State of Colorado Fiscal Rules.

1.18 REQUEST FOR PROPOSAL/INVITATION FOR BID:

The Request For Proposal/Invitation for Bid Form - the cover page of this RFP - must be signed, in ink, by a person authorized to bind the proposer, and returned with the proposal. In addition, any subsequent amendments (such as Responses to Inquiries), made to the RFP as per Section 1.6 must be acknowledged with signature by a person authorized to bind the proposer, and returned with the proposal.

1.19 BUDGETED FUNDS:

As the intent is to issue this as a task order contract, overall funds for the contract are not disclosed at this time. Based upon the pricing agreed upon in concluding this contract, task orders will be budgeted and issued as appropriate. Prior to issuing a task order, CTIO will issue a scope of work to the pool of qualified firms and will give no more than two weeks for a bid. CTIO will select the bid that is determined most advantageous to CTIO's need(s), and not necessarily the lowest cost.

1.20 INCURRED COSTS:

CTIO is not liable for any cost incurred by proposers prior to issuance of a legally executed contract or procurement document. No property interest of any nature shall occur until a contract is awarded and signed by all concerned parties.

1.21 INTENT TO AWARD:

After proposers are selected, an "Intent to Award" letter will be emailed to all firms who submitted a proposal. After Intent to Award has been issued, interested parties may review their proposal's evaluation scores by making an appointment with:

Mr. Simon Logan, CTIO Liaison & Program Coordinator
Colorado Transportation Investment Office
2829 W. Howard Place, 5th Floor
Denver, CO 80204

1.22 PROTESTED SOLICITATIONS AND AWARDS:

Any actual or prospective proposer or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the CTIO Director, Mr. Nicholas Farber. The protest shall be submitted in writing within seven (7) working days after such aggrieved person knows, or should have known, of the facts giving rise thereto. Ref. Section 24-109-101 et seq., C.R.S., as amended; Section 24-109-201 et seq., C.R.S. as amended; Section R-24-109-101 through R-24-109-206, Colorado Procurement Rules. Protests received after the seven-working-day period shall not be considered. Although CTIO is exempt from the Procurement Code, it will use its best efforts to adhere to the Procurement Code as related to protests only. The written protest shall include, as a minimum, the following:

- A. The name and address of the protestor;
- B. Appropriate identification of the procurement by bid, RFP, or award number;
- C. A statement of the reasons for the protest; and
- D. Any available exhibits, evidence or documents substantiating the protest.

1.23 STANDARD CONTRACT:

CTIO will incorporate standard State contract provisions into any contract resulting from this RFP (see Attachment B, Sample Contract). CTIO anticipates issuing a task order contract for a five year term.

1.24 SELECTION OF PROPOSAL:

All proposers will be notified in writing regarding the results of the RFP selection. Upon review and approval of the evaluation committee's recommendation for award, CTIO will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposers. Provided, however, that all proposers understand that such letter, by itself, does not grant any property interest or right of any nature in the RFP work/services or to a contract for the performance of such work/services. Contract terms that are consistent with the RFP and that are acceptable to the State must first be discussed, and a contract must then be completed and signed by all parties and the State Controller, before any such right exists. Therefore, the apparent successful proposer receiving a "Notice of Intent to Make an Award" letter shall not rely on that letter to make commitments to third parties, and the apparent successful proposer shall not take any actions(s) to prepare for, or start, the performance of the RFP work/services until a contract is so discussed and executed. If the parties are unable to agree on negotiated terms, for the contract, or if this desired schedule date is not met through no fault of CTIO, CTIO may elect to cancel the "Notice of Intent to Make an Award" letter and make the award to the next most advantageous proposer.

1.25 AWARD OF CONTRACT - MERIT:

The award will be made to that proposer whose proposal conforms to the RFP terms and conditions and is judged by the committee to be the most advantageous to the State of Colorado and CTIO, price and other factors considered, subject to negotiation, successful discussion, and final execution of an acceptable contract as described above.

1.26 AWARD OF CONTRACT - TIMELINE:

It is the intent of CTIO to select a preferred proposal within 60 days of the deadline for receipt of proposals. However, as the evaluation process is dependent upon the number of proposals received, their length, and committee member's schedules, the schedule of activities after the proposal submission deadline, is strictly estimated and therefore, bid proposals must be firm and valid for award for at least 90 days after the deadline for receipt of proposals.

1.27 NEWS RELEASES:

News releases pertaining to this RFP shall NOT be made prior to execution of a contract, and then are to be made only with the approval of CTIO. Selected proposer will not be allowed to discuss this information or to copy records to third parties per State regulation.

1.28 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

1.28.1. By submission of this proposal each proposer certifies and, in the case of a joint proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

- (a) The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
- (b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly to any other proposer or to any competitor; and
- (c) No attempt has been made by the proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

1.28.2 Each person signing the Request for Proposal / Invitation For Bid form of this RFP certifies that: He/she is the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 1.28.1 (a) through (c) above.

OR

He/she is not the person in the proposer's organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to 1.28.1 (a) through (c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 1.28.1 (a) through (c) above.

1.28.3 A proposal will not be considered for award where 1.28.1 (a) and (c), and/or 1.28.2 above have been deleted or modified. Where 1.28.1 (b) above has been deleted or modified, the proposal will not be considered for award unless the proposer furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of CTIO, or designee, determines that such disclosure was not made for the purpose of restricting competition.

1.29 TAXES:

The Proposer is hereby notified that when materials are purchased in certain political subdivisions the Proposer may be required to pay sales tax even though the ultimate product or service is provided to the State of Colorado. This sales tax will not be reimbursed by the State.

1.30 PROJECT SERVICES AND FUNDING AVAILABILITY:

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the State of Colorado.

1.31 INTELLECTUAL PROPERTY AND OWNERSHIP RIGHTS:

All original materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material and related intellectual property developed or created by the successful Contractor pursuant to the services sought by this RFP, and subsequently provided and integrated by contract between CTIO and the successful proposer, shall become the sole property of the State. Any commercial off-the-shelf software (COTS), required by successful proposer to complete the works described for this Contract, will be licensed to CTIO at CTIO's expense either directly by CTIO, or on behalf of CTIO, by the successful proposer.

1.32 SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION:

The State neither requests nor encourages the submission of confidential/proprietary information in response to this RFP. Information submitted will be open for public inspection. However, written requests for confidentiality can be submitted to the CTIO Director, provided that the submission must be in STRICT accordance with the following procedures. Adherence to these procedures remains the SOLE RESPONSIBILITY of the proposer.

PROCEDURES FOR SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION:

- A. Written request for confidentiality shall be submitted, by the proposer, with the proposal documents.
- B. The written request will be enclosed in an envelope marked "REQUEST FOR CONFIDENTIALITY", and attached to the cover of the ORIGINAL copy of the proposer's proposal that contains the CTIO invitation for proposal page with the proposer's ORIGINAL autographic signature.

- C. The written request must state SPECIFICALLY AND IDENTIFY BY PAGE NUMBER, what elements of the proposal are to remain confidential. The request must also IDENTIFY THE BASIS for the claim of confidentiality, OTHER than a recitation of a SPECIFIC State or Federal statute.
- D. Confidential/Proprietary information MUST be readily IDENTIFIED, MARKED and SEPARATED /PACKAGED from the rest of the proposal. Co-mingling of confidential/propriety information and other information is NOT acceptable.
- E. The CTIO Director will make a written determination as to the apparent validity of any request for confidentiality. The written determination of the Director will be sent to the proposer.
- F. Proposals that are determined to be at variance with this procedure may be declared non-responsive by the Director, and not given further consideration.

1.33 ASSIGNMENT AND DELEGATION:

Except for assignment of antitrust claims, neither party to any resulting contract stemming from this RFP, may assign or delegate any portion of the Contract without the prior written consent of the other party. This restriction includes contractor use of “out-of-state” personnel that may not have the ability to comply fully with CTIO Project scheduling constraints.

1.34 VENUE:

The laws of the State of Colorado shall govern in connection with the formation, performance and the legal enforcement of any resulting contract.

1.35 BACKGROUND, OVERVIEW AND GOALS:

A. CTIO Overview

In 2009, the Funding Advancements for Surface Transportation and Economic Recovery, otherwise known as FASTER, which established, in part, HPTE, now doing business as CTIO. The General Assembly found and determined in FASTER (Section 43-4-806(1), C.R.S.) that it is necessary, appropriate, and in the best interests of the state to aggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in reasonable amount of time, will allow more efficient movement of people, goods, and information throughout the state, and will accelerate the economic recovery of the state. CTIO’s legislation listed innovative means of financing projects to include, but not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting.

Since it was created in 2009, CTIO has been building its capacity for Express Lane operations. It currently has 108 lane miles of Express Lanes in operation and 115 lane miles of Express Lanes under construction. Express Lanes increase roadway capacity and help manage congestion on Colorado highways by adding lanes that provide a choice to drivers.

Nine out of ten CTIO projects have used some form of innovative financing (including two public-private partnerships). Innovative financing enabled by CTIO, through Express Lanes, has helped deliver more than \$3 billion in projects in the last five years. CTIO has:

- Helped secure \$130 million in federal grant dollars
- Directly attracted \$125 million in private investment
- Leveraged more than \$1 billion of bond proceeds and other loans to contribute to projects in the state’s most congested regions

Without the use of Express Lanes as a financing tool, the state of Colorado would have had to find an additional \$1.27 billion in funds to deliver these projects. Otherwise, the projects would have been significantly delayed, scope would have been reduced substantially, or money would have been reallocated from other projects around the state to fill the funding gaps. Without the use of Express Lanes as a financing tool, CTIO and CDOT would not have been able to deliver nine projects in five years, totaling more than \$3 billion in project value. Instead, without the Express Lanes, CDOT would have been able to deliver one, or possibly two, of the projects, with a value well under \$1 billion.

The Colorado Tolling Enterprise (CTE, CTIO's predecessor) and CTIO have a 15-year history with the E-470 Public Highway Authority ("Authority" or E-470):

- In 2006, CTE entered into a pass-through cost contract with the Authority for the I-25 Central Reversible Express Lanes.
- In 2015, CTIO entered into a five-year Tolling Services Agreement (TSA) for tolling equipment installation, maintenance of certain aspects of our tolling equipment, and other tolling back-office services.
- In 2018, CTIO extended the TSA by three years (from a June 2020 Expiration Date to June 2023).
- After the extension both parties focused on the procurement and CTIO's eventual selection of Electronic Transaction Consultants (ETC), effective August 18, 2020.

E-470 notified CTIO soon after the TSA extension that it was no longer going to install toll equipment for CTIO. On September 5, 2018, E-470 invited CTIO to join its Next Generation Lane Tolling System (NGLTS) RFP process, which resulted in the selection of ETC as vendor. Because CTIO needed a tolling equipment vendor for the upcoming Express Lanes, i.e., WB PPSL, Gap, etc., the Commercial Back-Office Service (CBOS) RFP was put on hold and all efforts were focused on the NGLTS RFP procurement process.

E-470 Public Highway Authority

The E-470 Public Highway Authority is a 47-mile semi-circular all electronic toll road to the east of the Denver Metro Area. E-470 is a political subdivision of the state under 43-4-502 C.R.S. with a Board of Directors consisting of the eight political subdivisions that the road bisects. The road opened in 1991 and transitioned to all electronic tolling in 2009.

ETC is CTIO's current tolling roadside equipment vendor. ETC is responsible for procuring, installing, and integrating all roadside tolling equipment. ETC also provides operational back-office services including trip building, dynamic pricing, and forming complete financial transactions. ETC provides maintenance services for tolling equipment and software.

B. CTIO's Goals for a Future CBOS

Since early this year, CTIO has been contemplating its needs regarding its future CBOS and has identified seven goals for a future CBOS. Those goals are:

1. Flexible, robust, and scalable CBOS;
2. Full and unrestricted access to all CTIO transactional data;
3. Full access and visibility of all processes;
4. Full access to cost model's native electronic files;
5. Performance-based contract;
6. Follow a competitive procurement; and
7. Fully auditable CBOS.

- C. We anticipate starting the procurement process in, issue a RFQ by summer 2022 and complete the RFP development by December 2022.

D. Responsibilities

The preferred proposer will work closely with the CTIO's staff, the CTIO Board Subcommittee on the Commercial Back Office Procurement, CTIO's tolling advisor (Atkins and KPMG), and the Attorney

General's Office to provide necessary legal advice and assistance with the CTIO's procurement of a CBOS. These services include, but are not limited to:

- Assist in preparation of documentation regarding the CTIO's CBOS requirements, business rules, intellectual property requirements, and policies to be approved by the CTIO Board.
- Ensure compliance with Colorado Revised Statutes, the state's procurement laws and policies, federal intellectual property laws, as applicable, and other related laws and regulations (including but not limited to PII, PCI, and cybersecurity state regulations and policies).
- Assist in the preparation of documentation, such as the Request for Information (if used), the Request for Qualifications, and the Request for Proposals.
- Assist in the preparation of the evaluation materials for the RFI, RFQ, and RFP.
- Assist in overseeing any demonstration of potential tolling technologies or a potential proof of concept.
- Assist in drafting a contract template
- Participate in the negotiation of contract terms, including state specific terms and intellectual property terms, with preferred proposer.
- Participate in the negotiation of the Tolling Services Agreement terms with the E-470 Public Highway Authority and its outside counsel.
- Support CTIO on ExpressToll brand negotiation with E-470 or CTIO own branded transponder development
- Provide legal support on interagency agreements, third party entities engagements (collection agencies, image review, ..etc._ or other states Department of Motor Vehicle (DMV) negotiations
- Assist with interoperable collection program negotiations (e.g. E-Zpass). Furnish necessary legal memoranda and render necessary opinions as appropriate.
- Attend CTIO Board and/or Transportation Commission meetings to the extent required or requested.
- Provide on-going legal support and advice for the procurement process as may be required by CTIO. Such work could include, but is not limited to, negotiating a new wind-down contractual mechanism with E-470.
- Provide support on any vendor protests.
- Assist in drafting the software escrow agreement.
- Assist in the development of violation enforcement process and related data retention requirements.

E. Personnel Assigned to the Engagement

Biographical information for the individuals that will be assigned to this engagement should be included with the proposal as an appendix (will not count towards page count). For lead members of your team, please identify their past experience on specific projects that involved advising toll providers. Please clearly identify the roles played by key members of your team through an organization chart showing the internal roles and relationships among team members. Proposers will be prohibited from making personnel changes during the engagement without CTIO's approval.

F. Case Studies

Provide up to three (3) examples of past work by your team in supporting toll providers procuring a new tolling and commercial back-office (within the last seven years). A brief description of these examples should be included in the main section of the proposal with limited additional information presented as an appendix, which will not count towards the page limit. Also, provide three (3) references for each case study that CTIO can contact.

G. Communications and Inquiries

Any and all inquiries associated with this request for proposals should be directed to:

Mrs. Kelly Brown, Tolling Operations Manager
Colorado Transportation Investment Office
2829 W. Howard Place, 5th Floor

Denver, CO 80204
(303) 877-4005
kelly.brown@state.co.us

All communications between a proposer and the CTIO contact person above must be by written or electronic communication. Any firm or person associated with a proposing team is prohibited from contacting any person at CTIO or CDOT on the subject of this RFP. Such communication will be considered as creating an unfair process and any firm violating this prohibition will be subject to disqualification.

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SECTION 2

INFORMATION REQUIRED FROM PROPOSERS

GENERAL OFFEROR RESPONSE – SUBMISSION GUIDELINES

2.0 GENERAL SUBMISSION GUIDELINES:

A “proposal” is a responsive, conforming, unconditional, complete, legible and properly executed offer from a qualified, responsible party interested in providing the services called for, and solicited by, this RFP. It shall be the sole responsibility of the proposer to ensure that the proposal is in the proper form and in CTIO’s possession at the designated location before the scheduled time on the due date of receipt. Proposals will not be returned unless the RFP solicitation is cancelled prior to the submittal due date, in which case such proposals will be returned unopened, or opened for identification purposes only. Any proposal received AFTER the submittal due date and time will be returned unopened, or opened for identification purposes only. It is the primary proposer’s further responsibility to identify any anticipated subcontractors, and their anticipated work responsibilities.

2.1 PROPOSAL REQUIREMENTS:

Proposals must provide details of how your organization anticipates providing the services required. This format will allow for more efficient evaluation by the committee and provide proposers with a means of ensuring all requested information is included as part of the submitted documentation. Proposals must detail the proposer’s understanding of, and approach to, the Project, including how each element of section 1.35(D) will be accomplished, identification of any work to be performed, or anticipated to be performed, by subcontractors. This section of the proposal should contain information amounting to more than a mere duplication or rephrasing of the RFP, instead, the proposer should demonstrate an understanding of the State’s needs and objectives. In other words, answer the question: What is the reason for this solicitation and work described herein?

Proposers should organize their material in the following sequence.

- Cover letter and executive summary (**won’t count against page limit**);
- Identification and brief description of the firm or firms included;
- Individuals assigned to the engagement and an organization chart;
- Relevant experience and skills of the team members;
- Case studies from experience acting as counsel for a public owner’s tolling back-office procurement.;
- Background / Approach to staffing the project;
- Hourly rates;
- Identification of any existing contract or relationship with CTIO, CDOT, E-470 Public Highway Authority, or other relevant stakeholder entity or group.

The basic response may not exceed fifteen (15) pages. One page shall equal one side of an 8 ½ X 11 inch sheet of paper, one column, single spaced. Describe in full the subject item. The description may be in narrative or outline format, while remaining as brief and concise as possible. Proposers are requested to avoid inclusion of general marketing material or place it in a clearly marked appendix. Resumes of key staff should be included as appendices to the proposal and will not count towards the page limit.

2.2 BACKGROUND / APPROACH TO PROJECT:

This section of the proposal, should demonstrate the proposer’s understanding of, and approach to, the described services, specifically addressing how *each element* of the Key Goals will be accomplished.

The proposer must not simply duplicate or rephrase this RFP, but rather submit a response containing information that demonstrates a good understanding of CTIO needs and objectives and how the proposer will attain those needs and objectives.

The goal of the proposer in responding to this section of the RFP is to provide the CTIO evaluation panel enough information to properly review and score in accordance with the criteria presented in Section 3.3.

The proposal should list and describe all relevant work experience and qualifications, including but not limited to:

- A. Why your firm is well qualified to provide the legal services that have been described in this RFP.
 - a. Please submit the name of the lead partner, the other partners, and the associates who will be assigned to the engagement. Please include résumé and state their relevant experience with past CBOS procurements. Please include the state or federal bar(s) to which he or she is admitted to practice and a listing of all courts before which he or she is actively practicing. Please note that if a firm elects to change the lead partner on the Project, CTIO will have to approve.
 - b. Provide the availability and percentage of time that the individuals will be assigned to the engagement;
- B. Recent experience in providing such legal services (please tailor your answers to what your firm is proposing). In particular, describe:
 - a. Your firm's relevant knowledge, including a description of your firm's expertise and experience in representing government entities on CBOS procurements (again, we want to know your firm's specific roles).
 - b. Your firm or team's experience with tolling back office intellectual property law.
 - c. Your firm's experience with the Colorado Taxpayer's Bill of Rights; Colorado State Statutes and Fiscal Rules the Colorado State Procurement Code—please be specific.
- C. Briefly describe your perspective on the key legal issues CTIO will likely face on this procurement;
- D. Briefly describe how your firm resolved particularly challenging legal issues in similar engagements such as this one;
- E. The steps that will be taken and procedures routinely used to ensure that any legal representation provided to CTIO will be provided in a cost effective manner;
- F. Your firm's resources and accessibility including a statement regarding the factual/legal resources available to your firm and the level of accessibility CTIO will have to your firm's services including the name(s) of the individual(s) that would be available to provide the requested legal service in the event the primary attorney is temporarily unavailable.

Please attach the biography and/or curriculum vitae of any paralegal or other employee who would bill time for any matter assigned to your firm.

Please provide at least three (3) references CTIO may contact at its discretion. The references should be selected to discuss the proposer's breadth of expertise.

Each reference must include contact names, email addresses, and telephone numbers for individuals familiar with the firms' or lead firm's work on similar projects.

2.3 CONFLICT IDENTIFICATION:

Proposals must identify all current and former contract activity with any existing State agency or transportation authority, reasonably related to the work described in this RFP. Indicate when involvement occurred and length of such involvement, the specific type of activity with identified agency and/or transportation authority, and indicate the extent of involvement with such entities.

2.4 PERSONNEL QUALIFICATIONS:

Proposal must identify all key personnel anticipated to be assigned to work. Those identified personnel must meet the minimum qualifications as described in this RFP. For each individual identified, qualifications and background must be provided, supplemented with resumes on each individual listed, and an estimate of the extent to which such individual will participate in the Project analysis. Staff positions must also be identified for personnel anticipated to be assigned.

Please provide the same information for any sub-contractors identified as members of a proposing team. (Sub-contractors subsequently added to a team will be subject to review and approval by CTIO).

Proposal will clearly define a strategy for replacement of team members who are no longer working on the Project. Any changes to staff, either before or during the term of the resulting contract, must be provided in writing to CTIO *prior to* their beginning work as part of the proposer's staff assigned to this Project.

2.5 FEE:

Please propose the fees your firm would charge for the legal services generally described in Section 1.35. You are encouraged to propose innovative fee structures. The following are examples of fee arrangements that may be considered:

- Individual hourly fees for legal services, with a not to exceed fee cap, and/or a deferred fee arrangement;
- Reduced hourly rates with a success or completion fee; and/or
- Blended or staged fees.

Please also include the expense reimbursements you require (subject to the State Fiscal Rules).

Finally, please include in your proposal the hourly fees associated with the individual lawyers you expect to assign to the engagement (by percentage, if appropriate) such individuals are expected to be involved.

Any changes to staff, either before or during the term of the resulting contract, must be provided in writing, to the State *prior to* their beginning work as part of the proposer's staff assigned to this project. In addition, all cost adjustments/modifications (if any) resulting from such staff changes must be submitted for approval by the State. (other than an agreed upon an hourly rate escalation on a yearly basis).

2.6 PROPOSER'S ORGANIZATION:

Proposer is encouraged to provide information regarding its organization which has not been specifically requested, but which the proposer believes relevant and of benefit to CTIO.

2.7 MBE/WBE PARTICIPATION:

The State encourages State agencies to utilize minority-owned and women-owned businesses to the greatest extent possible without sacrificing adequate competition. Proposers are reminded of the illegality of discrimination.

2.8 OTHER

1. Include a certification that the attorneys providing services are licensed to practice law in the State of Colorado or are associated (in your firm or otherwise) with attorneys licensed to practice law in the State of Colorado. Attorneys shall not engage in the unauthorized practice of law pursuant to applicable rules of professional conduct. CTIO will not select Colorado counsel for firms without either Colorado licensed attorney or a Colorado location. Proposers must team with firms that meet this requirement.
2. Please provide the form and amount of your firm's malpractice insurance coverage as an appendix. The Contractor named in this State Contract promises and agrees to maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$3,000,000.00 (Three Million Dollars) that provides coverage for work undertaken pursuant to this RFP, however nothing in this requirement shall limit any greater obligation imposed upon proposer by law for professional liability insurance.

SECTION 3 EVALUATION CRITERIA

3.1 AWARD OF BID:

This section will outline the specific evaluation criteria to be used by the evaluation committee in the review and selection of submitted proposals. At the conclusion of the evaluation, CTIO may request oral presentations from the top-ranked proposals. The possible interview of those top ranked proposals will be held at CDOT Headquarters, with each proposer given fair and equal treatment in this possible second phase of the evaluation.

Based on final review and discussion of the proposals, and interview evaluations (IF conducted), the evaluation committee will recommend proposer to enter into contract discussions with CTIO. Upon review and approval of the evaluation committee's recommendation for award, CTIO will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer. It is the intent of CTIO to award a contract to that proposers whose proposal is deemed to be most advantageous to the State of Colorado, price and other factors considered.

3.2 EVALUATION PROCESS:

3.2.1 An evaluation committee will independently evaluate the merit of proposals received in accordance with the evaluation factors defined in the RFP. The recommendations of this committee will be forwarded to the CTIO Director for review and approval.

3.2.2 Failure of the proposer to provide any information requested in the RFP may result in disqualification of the proposal as non-responsive. It is the responsibility of the proposer to provide all information required by this RFP.

3.2.3 The sole objective of the evaluation committee will be to recommend the proposals most responsive to CTIO's needs. The specifications detailed in this RFP represent the minimum performance necessary for such response.

3.2.4 The proposals deemed most advantageous for CTIO will be recommended for award.

3.2.5 Proposal Scoring:

The sole objective of the evaluation committee will be to score the proposals and recommend the proposers whose response are determined most advantageous to the CTIO, taking into consideration the price and all evaluation factors set forth herein.

Oral Presentation:

At the conclusion of evaluation and discussion of the written proposals, CTIO may (at the committee's sole discretion) conduct oral interviews.

IF the evaluation committee determines oral presentations will assist them in making a final proposal selection, the committee will conduct oral interviews for the purpose of:

Allowing the proposer an opportunity to verbally present its proposal to the evaluation committee;

Allowing the committee an opportunity to obtain further definition of proposal aspects and attempt to resolve any uncertainties;

Resolving suspected mistakes by calling such perceived errors to proposer's attention without disclosing information concerning other proposers' proposals; and

Allowing the committee an opportunity to ask specific questions of the proposer, regarding its proposal offer.

3.3 EVALUATION CRITERIA:

The complete proposal package will include, but not be limited to, evaluation using the factors listed below. These factors are designed to incorporate specific evaluation of the items described in Sections 1.35, 2.2, 2.4, 2.5 and 2.6 of this RFP.

As stated in Section 2.1, proposals should not simply repeat what is written in any Section of this RFP, but rather present evidence to the State as to the proposer's understanding of the RFP requirements, terms and conditions, and its ability to provide the services needed

During the evaluation phase, the committee will independently review each proposal and assign a total maximum score within each category, determined solely through the proposer's response to the criteria

detailed in the following sections. The evaluation of each proposal will be scored based upon a comparison of the information submitted by each proposer (as described in Sections 1.35 and as requested in Section 2) against the specific evaluation criteria outlined below.

3.3.1 Understanding of Required Services

Understanding and knowledge of legal and financial issues relating to the CTIO, including but not limited to, familiarity with basic state constitutional and statutory issues, and intellectual property law that are germane for the procurement a new tolling back-office.

3.3.2 Overall Experience and Capabilities

- Experience in serving as CBOS procurement counsel in the United States, including favorable references from other governmental entities.
- Relevant experience on assisting public owners on a tolling back-office procurement.
- Strong understanding of Colorado law, TABOR (and its implications to CTIO's interaction with CDOT).
- Strong understanding of intellectual property law, especially as it relates to tolling back office systems, ITS, or related areas.
- General knowledge of, and experience with, procurement and contract law.
- Demonstrated, first-hand knowledge of international and U.S. precedents and practices for assisting public owners on a tolling back-office procurement. Demonstrated, first-hand experience of domestic precedents and practices for similar projects.

3.3.3 Qualifications and Ability to provide Services

Qualification and commitment of personnel, including an experienced lead and as appropriate intellectual property, local law, and tax attorney from the firm.

3.3.4 Budget and Narrative

- Information is provided as requested in Section 2.5. Fee proposal must outline proposer's fees for the entire terms of the contract with CTIO;

3.3.5 Feasibility and Completeness and References

- The proposal is both comprehensive and complete, as defined by this RFP.
- The proposal inspires confidence that the quality of work and deliverables solicited by the RFP will be provided by the proposer,
- The proposal includes no unacceptable modification to the State's standard and special terms and conditions.

Understanding of Required Services	25%
Overall Experience & Capabilities	25%
Qualifications and Ability of Assigned Staff to Provide Services	20%
Budget & Narrative	20%
Feasibility, Completeness and References	10%

SECTION 4 TERMS OF CONTRACT

4.1 CONTRACT:

The successful proposers will be required to enter into a formal contract with CTIO. The contract will incorporate the RFP, standard contract terms, Colorado State Special Provisions, any published addenda and the response/proposal of the successful proposer. Any contract resulting from this RFP may not be modified, amended, extended or augmented except through an authorized contract modification executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party. CTIO reserves the right to eliminate or exclude aspects of the successful proposal which may be determined by CTIO as unnecessary, or those aspects CTIO decides to assume itself, or let out by separate contract.

4.2 CONTRACT TERMS:

Standard State of Colorado contract terms outside of the Scope of Work are not negotiable. Contract terms within the Scope of Work *may be* discussed **only if** the proposal includes specific and express requests for modification, including a detailed description for all such requests. If the proposal fails to raise a modification request for discussion, those non-identified portions of the Scope of Work will be considered acceptable to the proposer, and incorporated into the final contract. Submittal of exceptions does not guarantee their acceptance by the State, however, and may, in fact, result in a lower final score, and the State may, in its *sole discretion*, waive the required application of any such term(s), if the State determines that is in its best interests under the circumstances to do so.

The contract will also stipulate that CTIO will be provided with monthly invoices of actual hours of service and associated costs, and a monthly work statement providing a brief description of the services invoiced, specifically identifying staff member/positions assigned to the Work. The State may make payment to the successful proposer for monthly work actually and satisfactorily performed, such payments subject to the State's receipt and approval of the above mentioned invoices and work statements.

4.3 LENGTH OF CONTRACT:

The term of this contract shall begin on the date indicating Controller approval, and shall extend no more than five years from that date unless otherwise specified, earlier terminated, or extended pursuant to state fiscal rules provided that the vendor shall remain responsible for contract obligations which necessarily continue beyond such termination date, including final audit. CTIO anticipates this engagement taking five years from notice to proceed.

ATTACHMENT B SAMPLE CONTRACT

Note: Attached is a DRAFT State Contract similar to one which the selected Vendor will be required to enter into. It contains terms and conditions that are typical and/or required on State contracts. The terms and conditions contained in the FINAL contract may deviate from this draft depending on the outcome of the Request for Proposal. The State reserves the right to add or delete terms and conditions in accordance with the needs of the State or as may be mandated by State Statute.

STATE OF COLORADO MASTER TASK ORDER CONTRACT

COVER PAGE

State Agency Insert Department's or IHE's Full Legal Name	Contract Number Insert CMS number or Other Contract Number		
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	Contract Performance Beginning Date The later of the Effective Date or Month Day, Year		
Contract Authority Insert Brief Description of the Authority to enter into the Contract	Initial Contract Expiration Date Month Day, Year		
Contract Purpose Briefly describe the Contract's purpose			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work 2. Exhibit B – Sample Option Letter 3. Exhibit C – Form of Task Order <p>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:</p> <ol style="list-style-type: none"> 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, Sample Option Letter. 5. Exhibit C, Form of Task Order 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> For the State: <ul style="list-style-type: none"> Name Department Name Address Address City, State Zip Email </td> <td style="width: 50%; vertical-align: top; border: none;"> For Contractor: <ul style="list-style-type: none"> Name Company Name Address Address City, State Zip Email </td> </tr> </table>		For the State: <ul style="list-style-type: none"> Name Department Name Address Address City, State Zip Email 	For Contractor: <ul style="list-style-type: none"> Name Company Name Address Address City, State Zip Email
For the State: <ul style="list-style-type: none"> Name Department Name Address Address City, State Zip Email 	For Contractor: <ul style="list-style-type: none"> Name Company Name Address Address City, State Zip Email 		

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 align="center">CONTRACTOR INSERT-Legal Name of Grantee</p> <hr/> <p>By: Name & Title of Person Signing for Contractor</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <hr/> <p>By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>
<p align="center">2nd State or Contractor Signature if Needed</p> <hr/> <p>By: Name & Title of Person Signing for Signatory</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p>By: _____</p> <p align="center">- Assistant Attorney General</p> <p>Date: _____</p>
<p align="center">In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p align="center">By: _____</p> <p align="center">Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p align="center">Effective Date: _____</p>	

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1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Contract (the “State”). Contractor 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 Contractor 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. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this

Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

E. 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 by Contractor, which shall be governed by **§12.A.i**.

i. Method and Content

The State shall notify Contractor 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, Contractor 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 Contractor 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 Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“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 Contractor, or the appointment of a receiver or similar officer for Contractor 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 Contractor 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.
- B. **“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.
- C. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202, C.R.S. to procure or supervise the procurement of all supplies and services needed by the State.
- D. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- E. **“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.
- F. **“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.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. **“End of Term Extension”** means the time period defined in §2.D.
- I. **“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. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract
- J. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- K. **“Extension Term”** means the time period defined in §2.C.
- L. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- M. **“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 Information 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.

- N. **“Initial Term”** means the time period defined in §2.B.
- O. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- Q. **“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.
- R. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- S. **“Project”** means a specific portion of the Work that is included in a Task Order.
- T. **“Services”** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- U. **“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, PHI, PCI, Tax Information, CJI, 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 Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, 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.
- V. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.

- W. **“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.
- X. **“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.
- Y. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- Z. **“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.
- AA. **“Tax Information”** means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- 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

Contractor shall complete the Work 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 Contractor 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 Contractor 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.

i. Task Order Development

To initiate a Task Order, the State will provide a request to Contractor describing the general scope and intent of the Work it desires Contractor to perform under that Task Order and the timeline for Contractor to submit a proposal in response to the request. Contractor shall submit a proposal to the State, within the timeline provided by the State, in response to the State’s request that contains, without limitation, a description of all of the following for the Project described in that Task Order:

- a. 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.
- b. All activities necessary for Contractor to complete the Project. This description may be in the form of a work breakdown structure if requested or approved by the State.
- c. All timelines and milestones that the State will use to determine if Contractor 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.
- d. 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 Contractor shall not include any work in a Task Order for which an applicable rate is not provided in this Contract.
- e. Contractor 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.

The State may direct Contractor to make changes to any proposal Contractor submits to the State. Contractor 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 Contractor 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

If the State accepts a proposal from Contractor, then the State will include that proposal as the statement of work for a Task Order. The State shall execute that Task Order in a form substantially similar to the Form of Task Order attached to this Contract. Contractor shall not begin work on any Project until the Task Order for that Project is fully executed.

iii. Task Order Completion

Contractor 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.

iv. Task Order Modifications

When the Parties desire to modify a Task Order, Contractor 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. 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. This paragraph **4.B.iv** shall not apply to any modification to a Task Order that only modifies timelines within a Project without changing the due date of any deliverable or other end result, or only modifies the breakdown of costs within a Project without changing the total maximum

amount for any State Fiscal Year, which may be made if the State approves of the modification in writing.

v. 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.

5. PAYMENTS TO CONTRACTOR

A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The Contract Maximum Amount for each State Fiscal Year shall be equal to the total maximum amount of all Task Orders for that State Fiscal Year. The State shall not pay Contractor any amount under this Contract for a State Fiscal Year that exceeds the maximum of all Task Orders for that State Fiscal Year, and shall not pay any amount under any Task Order for a State Fiscal Year that exceeds the maximum amount shown on that Task Order for that State Fiscal Year.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A and the terms of each Task Order.
- b. Contractor 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 Contractor 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 Contractor 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.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or

calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund 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.E.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Contractor 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 Contractor's ability to perform its obligations under this Contract, Contractor 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.

C. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §14 and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the

United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor 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 Contractor 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

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor'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 Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor 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." Contractor 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. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJ, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors 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 Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access, subject to Contractor'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, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor 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 Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor 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, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services

of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors 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 Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor 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. Contractor 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.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor 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 Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor'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

Contractor 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, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor 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.

10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor 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 Contractor or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, 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. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$2,000,000 general aggregate.

E. 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 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. 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 Contractor and Subcontractors.

H. Primacy of Coverage

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

I. 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 Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

J. Subrogation Waiver

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

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor 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 Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor 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 Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor 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, Contractor 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 Contractor 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 Contractor 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 Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor 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, Contractor 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, Contractor 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, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor 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 Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor'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.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined. The State may withhold any amount that may be due Contractor 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 Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor 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 Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor'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. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors 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.

e. 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, Contractor shall, as approved by the State (i) secure that right to use such Work for the State and Contractor; (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. Contractor's Remedies

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

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 Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as

described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §24-106-109, C.R.S., and §§24-109-101.1 through 24-109-505, C.R.S. (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

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

Contractor 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. Whether or not Contractor is under contract with the State at the time, Contractor 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.

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, Contractor 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 Contractor cannot make any of the assignments required by this section, Contractor 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. Patents

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor's obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor 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 Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor 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 Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Contractor Property"). Contractor 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.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Contractor'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 Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor 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.

C. Binding Effect

Except as otherwise provided in **§17.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 agreement 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 Contractor's or a Subcontractor'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 Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor 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

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

S. Licenses, Permits, and Other Authorizations.

Contractor 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 Subcontractors 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

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

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor 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 act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorney's fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

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

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

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

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

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

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and

services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK

EXHIBIT B, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00	Option Contract Number Insert CMS number or Other Contract Number of this Option
Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00	Contract Performance Beginning Date Month Day, Year
Total for All State Fiscal Years \$0.00	Current Contract Expiration Date Month Day, Year

1. OPTIONS:

- A. Option to extend for an Extension Term
- B. Option to change the quantity of Goods under the Contract
- C. Option to change the quantity of Services under the Contract
- D. Option to modify Contract rates
- E. Option to initiate next phase of the Contract

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
- B. **For use with Options 1(B and C):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the quantity of the Goods/Services or both at the rates stated in the Original Contract, as amended.
- C. **For use with Option 1(D):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to modify the Contract rates specified in Exhibit/Section Number/Letter. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
- D. **For use with Option 1(E):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc, which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.
- E. **For use with all Options that modify the Contract Maximum Amount:** The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown above.

3. OPTION EFFECTIVE DATE:

- A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <hr style="width: 80%; margin-left: 0;"/> <p>By: Name & Title of Person Signing for Agency or IHE</p> <p style="margin-left: 40px;">Date: _____</p>	<p style="text-align: center;">In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p style="text-align: center;">Option Effective Date: _____</p>
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EXHIBIT C, FORM OF TASK ORDER

State Agency Insert Department's or IHE's Full Legal Name	Task Order Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name, including "Inc.", "LLC", etc...	Master Task Order Contract Number Insert CMS number or Other Contract Number of the Master Task Order Contract
Task Order Maximum Amount State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Task Order Contract Number Insert CMS number or Other Contract Number of this Task Order
	Task Order Performance Beginning Date The later of the Task Order Effective Date or Month Day, Year
	Task Order Expiration Date Month Day, Year

In accordance with **§4.B** of the Master Task Order Contract referenced above, Contractor shall complete the following Project:

1. PROJECT DESCRIPTION

Contractor shall complete the Project described in Contractor's proposal that is attached hereto and incorporated herein (the "Proposal"). All terminology used in this Task Order and the Proposal shall be interpreted in accordance with the Master Task Order Contract unless specifically defined differently in this Task Order.

2. PAYMENT

The State shall pay Contractor the amounts shown in the Proposal in accordance with the requirements of that Proposal and the Master Task Order Contract. The State shall not make any payment for a State Fiscal Year that exceeds the Task Order Maximum Amount shown above for that State Fiscal Year.

3. PERFORMANCE PERIOD

Contractor shall complete all Work on the Project described in this Task Order by the Task Order Expiration Date stated above. Contractor 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.

<p>CONTRACTOR INSERT-Legal Name of Grantee</p> <p>_____ By: Name & Title of Person Signing for Contractor</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <p>_____ By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>
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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: _____
Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

Task Order Effective Date: