



## COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

### REQUEST FOR PROPOSAL

### SUBMISSION DEADLINE: September 1, 2015

Proposals submitted to: HPTE; 4201 E. Arkansas, Room 230; Denver, CO 80222 c/o Nicholas Farber

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NOTE: Vendors delivering their proposal in person must check into the CDOT's Headquarters Building before being allowed to proceed to **Room 230** to submit their proposals. Vendors should allow approximately 10 minutes in advance of proposal deadline for the check-in procedure. HPTE 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.

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#### **Strategic Communications Advisor for HPTE**

The Colorado High Performance Transportation Enterprise (HPTE), a division of the Colorado Department of Transportation (CDOT), is requesting proposals from qualified individuals and/or firms (Contractor) interested in providing strategic communication services for the HPTE Program for the next year.

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

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**HPTE 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 HPTE 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 HPTE 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 HPTE. 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 HPTE.***

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) \_\_\_\_\_  
City, State, Zip \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
Vendor Phone \_\_\_\_\_ Fax \_\_\_\_\_ F.E.I.N./SSN \_\_\_\_\_

NOTE: Results will be posted on the HPTE 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 HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

## SECTION 1 ADMINISTRATIVE INFORMATION

### 1.1 ISSUING OFFICE:

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

Mr. Nicholas Farber  
HPTE Operations Manager  
4201 East Arkansas Avenue, Room 230  
Denver, CO 80222  
(720) 248-8544  
[nicholas.farber@state.co.us](mailto:nicholas.farber@state.co.us)

### 1.2 PURPOSE:

The purpose of this RFP is to obtain competitive bid proposals from qualified individuals and/or firms interested in serving as a strategic communications advisor for the HPTE Program (the Program) as more specifically described below.

This RFP provides prospective proposers with sufficient information to enable them to prepare and submit proposals for consideration by HPTE to satisfy the needs as outlined in the Scope of Work.

### 1.3

SCHEDULE OF ACTIVITIES:	DATE	TIME (MST)
A. RFP Published on HPTE Website	July 28, 2015	2PM
B. Prospective Proposers' Inquiry Deadline	August 12, 2015	4PM
C. Response to Proposer Questions	August 19, 2015	4PM
D. <b>PROPOSAL SUBMISSION DEADLINE</b>	<b>SEPTEMBER 1, 2015</b>	<b>4PM</b>
E. Evaluation of Proposals	September 2, 2015	N/A
F. Top Consultants Selected and Notified of Interview (estimate) <i>if determined necessary.</i>	September 11, 2015	2PM
G. Interviews with short list of Consultants (estimate), <i>required.</i>	September 15, 2015	9AM
H. Consultant Selection (estimate)	September 16, 2015	12PM

### 1.4 PROPOSAL SUBMISSION:

All proposals must be received by the Procurement and Contract Services, 4201 East Arkansas Avenue, Room 200 Denver, CO 80222, 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 **6 copies** of the proposer's complete proposal. It is the responsibility of the proposer to ensure that their proposal is received by the HPTE 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 the **Strategic Communications Advisor for HPTE** 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 10 pages, not including the covers, index, tab sheets, required forms or certifications, resumes and appropriate appendices.

Proposers are advised that HPTE 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:

Mr. Nicholas Farber  
HPTE Operations Manager  
4201 East Arkansas Avenue, Room 230  
Denver, CO 80222  
(720) 248-8544  
[nicholas.farber@state.co.us](mailto:nicholas.farber@state.co.us)

All envelopes containing questions must be clearly labeled "**Inquiry for Strategic Communications Advisor**" 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 Strategic Communications Advisor**" in the Subject Line. An addendum will be published onto the HPTE website, at <http://www.coloradodot.info/programs/high-performance-transportation-enterprise-hpte>, 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 HPTE website. It is the prospective proposer's sole responsibility to monitor the internet site, at <http://www.coloradodot.info/programs/high-performance-transportation-enterprise-hpte>, 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, Public (open) Records.

**1.8 PROPRIETARY INFORMATION:**

All material submitted in response to this RFP will become public record and will be subject to inspection after the HPTE 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 HPTE 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:**

Pursuant to Procurement Rule 24-103-301, the HPTE 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 the HPTE 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 the HPTE 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 the HPTE 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 HPTE 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 HPTE 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 HPTE specific projects.

1.12.3 The sole responsibility of the committee will be to recommend the bidder 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. Firms or individuals involved in work on the Interstate 70 East project will not be considered.
- 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. 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:**  
The HPTE has budgeted **\$60,000** and up to \$60,000 for telephone town hall meetings or town hall meetings for the worked described in Section 1.34.
- INCURRED COSTS:**  
The HPTE 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.
- 1.20 INTENT TO AWARD:**  
After a proposer is 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 by making an appointment with:
- Mr. Michael Cheroutes, Director  
High Performance Transportation Enterprise  
4201 East Arkansas Avenue, Room 230  
Denver, CO 80222
- 1.21 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 HPTE Director, Mr. Michael Cheroutes. 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. 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.

**1.22 STANDARD CONTRACT:**

The HPTE will incorporate standard State contract provisions into any contract resulting from this RFP (see Attachment B, Sample Contract). The HPTE anticipates issuing a contract for a one year term.

**1.23 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, the HPTE Procurement Office will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer. 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 HPTE, HPTE may elect to cancel the "Notice of Intent to Make an Award" letter and make the award to the next most advantageous proposer.

**1.24 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 HPTE, price and other factors considered, subject to negotiation, successful discussion, and final execution of an acceptable contract as described above.

**1.25 AWARD OF CONTRACT - TIMELINE:**

It is the intent of HPTE 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.

**1.26 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 HPTE. Selected proposer will not be allowed to discuss this information or to copy records to third parties per State regulation.

**1.27 CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:**

1.27.1. 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.

1.27.2 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.

1.27.3 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 the HPTE Procurement Office, or designee, determines that such disclosure was not made for the purpose of restricting competition.

**1.28 TAXES:**

The State of Colorado, as purchaser, is exempt from all Federal taxes under Chapter 32 of the Internal Revenue Code (Registration No. 84-730123K) and from all State and Local Government Use Taxes (Ref. Colorado Revised Statutes Chapter 39-26.114[a]). Seller is hereby notified that when materials are purchased in certain political subdivisions the seller 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.

**1.29 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.

**1.30 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 HPTE 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 HPTE at HPTE's expense either directly by HPTE, or on behalf of HPTE, by the successful proposer.

**1.31 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 HPTE 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 HPTE 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 HPTE 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.

**1.32 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 HPTE Project scheduling constraints.

**1.33 VENUE:**

The laws of the State of Colorado shall govern in connection with the formation, performance and the legal enforcement of any resulting contract. It is the intent of HPTE that the requirements of Title 24, C.R.S. as amended, Article 101 through 112 and Rules adopted to implement those statutes shall govern this procurement to the extent they may be applicable.

**1.34 BACKGROUND, OVERVIEW AND GOALS:**

A. Statement of Solicitation Request

The Colorado High Performance Transportation Enterprise is seeking a proposal for Strategic Communications Advisor for the on-going HPTE Program.

Program Description:

The Funding Advancement for Surface Transportation and Economic Recovery Act (Part 8 of Article 4, Title 43, Colorado Revised Statutes), otherwise known as FASTER, created the HPTE in 2009 as a government-owned business within the Colorado Department of Transportation (CDOT).

The HPTE has the responsibility to seek out, in partnership with local agencies, communities, and private industry, opportunities for innovative and efficient means of financing and delivering important surface transportation infrastructure projects in the State. It has the power, among others, to impose tolls and other user fees, to issue revenue bonds secured by those fees and to enter into contracts with public and private entities to facilitate public-private partnerships (P3s). The law also introduced a new governance structure, creating an HPTE Board of Directors which includes a mix of State Transportation Commissioners and external stakeholders appointed by the Governor to make it better able to pursue P3s and other creative financing mechanisms.

HPTE, in partnership with CDOT, is seeking to obtain advisory services to inform stakeholders about and build support for the purpose and use of P3s in the innovative finance of major transportation corridors. For a more detailed description of the Program and its various projects, please see the following website:

<http://www.coloradodot.info/programs/high-performance-transportation-enterprise-hpte>

B. Scope of Services

Consultant will develop and implement the following for HPTE:

**1. Strategic Communications Plan Implementation:**

a. **Communications Plan:**

Consultant will coordinate with CDOT and HPTE and other stakeholders to implement a multi-channel communications strategic communications plan to support work that includes: media relations, website, social media, graphics, public presentation materials and displays, press materials and crisis communication.

Communication support may include supporting HPTE’s efforts in HPTE in : project-related, transparency and procurement outreach, public-private partnership education and outreach, stakeholder and P3 Alliance coordination, re-branding efforts, tolling outreach, Express Lanes corridor grand openings and all other identified milestones and activities impacting HPTE. Work may include items such as:

1. Media relations to include strategies, tactics and suggest action items. Tasks may include developing reporter and editorial board briefings, op-eds, letters to the editor, articles/letters, artwork and design, remarks for events, identifying appropriate speaking engagements and outreach activities, press materials such as, but not limited to press releases, online and print materials.

2. Updating of communications plan as needed and on-going.
3. Assistance in record-keeping for meeting requirements from the State Audit and HPTE Transparency Policy.
4. Provide planning assistance for town hall and telephone town hall meetings, including securing appropriate vendors for any town hall meeting, as needed.

**b. HPTE Website Planning:**

Consultant will evaluate, develop suggestions and help to implement and keep updated the HPTE website with the goals:

1. To support HPTE’s strategic communications efforts and timelines,
2. Be an easy and quick access tool for the public and HPTE stakeholders to access HPTE, project-related data, reports, events and other key public information.
3. Work within the CDOT website protocol.

**c. HPTE Social Media Planning:**

Consultant will evaluate, create and implement a social media component of the strategic plan to support HPTE’s strategic communications efforts and timelines, work in coordination with CDOT, P3 Alliance and other stakeholders. The social media activities will help to increase HPTE’s social media presence and should include suggestions for frequency, content, management, etc.

**d. HPTE Outreach**

1. All other tasks as assigned by HPTE.

## **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 HPTE’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. 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 HPTE’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;
- Organizations credentials and previous experience in undertaking similar assignments, including any prior experience with Programs of this nature.
- Available resources and location of team members for duration of the assignment.
- Proposed project team leader and members and their resués, as well as a description of how the engagement will be conducted, including involvement of key staff.

- Suggested changes, if any, to the Scope of Work outlined above, including the rationale for the changes.
- Proposed timetable for the work.
- A fee proposal for labor to accomplish the work and an indicative budget for travel, accommodation and other out-of-pocket expenses.
- A suitable form of engagement letter for the assignment.
- Confirmation of the level of Professional Indemnity coverage proposed by the prospective Advisor – HPTE would like this to be a least ten times the professional fees quoted.
- Confirmation that the Prospective Advisor does not have any potential conflicts of interest that would affect its work on the Program; and will enter into a Confidentiality Agreement substantially in the form attached.

The basic response may not exceed 10 pages. One page shall equal one side of an 8 ½ X 11 inch sheet of paper, one column, single spaced in 12-point font (prefer Arial, Courier, or Verdana). Describe in full the subject item. The description may be in narrative or outline format, while remaining as brief and concise as possible.

**2.2 ADMINISTRATIVE INFORMATION:**

Proposal must include a brief statement of the proposer’s understanding and compliance with the Administrative terms and conditions set forth in Section 1 of this RFP.

**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 WORK EXPERIENCE AND CAPABILITY:**

HPTE anticipates that the firm or team selected will have expertise in transportation communication efforts, including, transportation finance matters, transportation related financing techniques, knowledge of toll road financing and operations, major project development and construction models and different public-private partnership arrangements.

**Specifically, the proposal must address/provide each of the following Qualification factors as indicated:**

- A brief history of the firm or the lead firm.
- A description of the firm’s or lead firm’s experience in the providing the work.
- A list of similar projects, dates of completion and contract amount.
- At least three references HPTE 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.
- The proposer’s approach to developing and delivering the required work products and deliverables.

**2.5 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 HPTE.)

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 HPTE *prior* to their beginning work as part of the proposer’s staff assigned to this Project.

**2.6 COST:**

Proposers must include the proposed hourly billing rate for any of the core team members identified in a proposal, provided that rates for support categories may be listed without identification of specific personnel. This information must be presented in tabular form. Adding work and team members can require contract amendments; therefore, a comprehensive list is preferred as an element of this submission.

HPTE's preference is for an hourly fee structure that either meets or comes in below the HPTE's budget. The preferred structure is:

**Fees** – Fee structure should include hourly rates and monthly retainer caps;

**Disbursements** – Hourly rates and fixed caps to allow for/include all disbursements such as communications, photocopying, etc., but not material third party costs.

**Quote Basis:**

Please provide a fee breakdown by task and time allocated for each nominated team member to each task.

Please provide estimates for travel, accommodation and out-of-pockets.

Please provide details should the Prospective Advisor be conflicted or otherwise unable to quote for any of the tasks listed above.

**2.7 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 the Project.

**2.8 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, and the provisions of Procurement Code Section 24-111-02.

## 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, HPTE **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 the HPTE. Upon review and approval of the evaluation committee's recommendation for award, the HPTE Procurement Office will issue a "Notice of Intent to Make an Award" letter to the apparent successful proposer. It is the intent of HPTE to award a contract to that proposer 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 HPTE 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 proposal most responsive to HPTE needs. The specifications detailed in this RFP represent the minimum performance necessary for such response.

3.2.4 The proposal deemed most advantageous for HPTE 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 proposer whose response is determined most advantageous to the HPTE, 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, HPTE **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 1.34, 2.4, 2.5 and 2.6 of this RFP.

Proposals must provide details of how your organization anticipates providing the services required. Detailed financial information must also be included, specifically addressing the providing of services and including proposed estimated cost(s) for providing each task.

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 within a clearly defined and cost-effective budget. (Refer to Section 2.6 of this RFP).

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 1.34 and as requested in Section 2) against the specific evaluation criteria outlined below.

### 3.3.1 Capabilities, Experience and Qualifications

- The documented experience of the firm or lead firm with comparable engagements;
- The role played by key staff in supporting work product delivery for the comparable engagements;
- The range of staff experience and skills;
- The documented experience of the firm or lead firm with comparable engagements;

### 3.3.2 Project Approach and Work Plan

- Clarity in the approach and work plan to conduct the required research and analysis of options;
- Demonstration of an understanding of HPTE objectives;
- Evidence that the work plan can be completed in the desired timeframe;
- Documented record of assigning key personnel to the analysis and execution of the work plan.

### 3.3.3 Cost and Compensation Proposal

- The total cost to provide the required services;
- The timing and terms of payment for services.

### 3.3.4 Feasibility and Completeness

- 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.

Capabilities, Experience and Qualifications	40%
Project Approach and Workplan	35%
Compensation amount and structure	20%
Feasibility and Completeness	5%

## **SECTION 4 TERMS OF CONTRACT**

### **4.1 CONTRACT:**

The successful proposer will be required to enter into a formal contract with HPTE. 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. HPTE reserves the right to eliminate or exclude aspects of the successful proposal which may be determined by HPTE as unnecessary, or those aspects HPTE 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 the HPTE 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 one year 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.





## **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**  
**Department of Transportation**  
**Contract**  
**with**  
**Insert Contractor's Full Legal Name**

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**1. PARTIES**

This Contract (hereinafter called "Contract") is entered into by and between Insert Contractor's Name, a Enter State Choose Type (hereinafter called "Contractor"), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the "State" or "CDOT"). Contractor and the State hereby agree to the following terms and conditions.

**2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

This Contract shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or its designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

**3. RECITALS**

**A. AUTHORITY, APPROPRIATION, AND APPROVAL**

Authority to enter into this Contract exists in CRS Choose 2021FB, 203RFP, 205Sole, 801DSetaside and 43-1-106, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

**B. CONTRACTOR SELECTION**

Contractor's was selected in accordance with Colorado law and State Procurement Rules pursuant to the State's issuance of Choose Bid Type Bids #.

### **C. CONSIDERATION**

THE PARTIES ACKNOWLEDGE THAT THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION ARE SUFFICIENT AND ADEQUATE TO SUPPORT THIS CONTRACT.

### **D. CONTRACT PURPOSE**

Briefly describe purpose of the appropriation.

### **E. REFERENCES**

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.

## **4. DEFINITIONS**

- The following terms as used herein shall be construed and interpreted as follows:

### **A. BUDGET**

"Budget" means the budget for the Work described in Exhibit A.

### **B. CONTRACT**

"Contract" means this Contract for Goods and Services, its provisions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

### **C. CONTRACT FUNDS**

"Contract Funds" means funds available for payment by the State to Contractor pursuant to this Contract.

### **D. EVALUATION**

"Evaluation" means the process of examining Contractor's Work and rating it based on criteria established in §6 and Exhibit A.

### **E. EXHIBITS AND OTHER ATTACHMENTS**

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Statement of Work), **Exhibit B** (Prices and Rates), and **Exhibit C** (Option Letter).

### **F. GOODS**

"Goods" means tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services Contractor renders hereunder.

### **G. PARTY OR PARTIES**

"Party" means the State or Contractor and "Parties" means both the State and Contractor.

### **H. REVIEW**

"Review" means examining Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and Exhibit A.

### **I. SERVICES**

"Services" means the required services to be performed by Contractor pursuant to this Contract.

### **J. SUBCONTRACTOR**

"Subcontractor" means third-parties, if any, engaged by Contractor to aid in performance of its obligations.

### **K. WORK**

"Work" means the tasks and activities Contractor is required to perform to fulfill its obligations under this Contract and **Exhibit A**, including the performance of the Services and delivery of the Goods.

### **L. WORK PRODUCT**

"Work Product" means the tangible or intangible results of Contractor's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

## **5. TERM and EARLY TERMINATION**

### **A. INITIAL TERM-WORK COMMENCEMENT**

The Parties' respective performances under this Contract shall commence on the Effective Date of this Contract (OR) the later of either the Effective Date or (Enter Start Date). This Contract shall extend for twelve (12) months

from the Effective Date (OR) terminate on (Enter End Date) unless sooner terminated or further extended as specified elsewhere herein.

## **B. TWO MONTH EXTENSION**

The State, at its sole discretion upon written notice to Contractor as provided in **§16**, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties are negotiating a replacement Contract (and not merely seeking a term extension) at or near the end of any initial term or renewal term. The provisions of this Contract in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The two month extension shall immediately terminate when and if a replacement Contract is approved and signed by the Colorado State Controller.

## **C. STATE'S OPTION TO EXTEND**

At its sole discretion, the State, upon written notice to Contractor in a form substantially equivalent to **Exhibit C**, may unilaterally require continued performance of this Contract for up to Choose Number additional Choose Choose at the same rates and terms specified in the Contract. The State shall exercise the option by written notice to the Contractor within 30 to 60 days prior to the end of the current contract term. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the Contract. The total duration of this Contract, including the exercise of any options, shall not exceed 3 Choose.

# **6. STATEMENT OF WORK**

## **A. COMPLETION**

Contractor shall complete the Work and its other obligations as described herein and in **Exhibit A** within the Term specified in **§5**. The State shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Contract.

## **B. GOODS AND SERVICES**

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

## **C. EMPLOYEES**

All persons employed by Contractor or Subcontractors to perform Work under this Contract shall be Contractor's or Subcontractors' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Contract.

# **7. PAYMENTS TO CONTRACTOR**

The State shall, in accordance with the provisions of this **§7**, pay Contractor in the amounts and using the methods set forth below:

## **A. MAXIMUM AMOUNT**

The maximum amount payable under this Contract to Contractor by the State is **\$0.00**, as determined by the State from available funds. Payments to Contractor are limited to the unpaid obligated balance of the Contract set forth in **Exhibit B**.

## **B. PAYMENT**

### **i. Advance, Interim and Final Payments**

**Any advance payment allowed under this Contract or in Exhibit B shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. Contractor shall initiate any payment requests by submitting invoices to the State in the form and manner set forth in approved by the State and shall attach receipts or other documentation as required in Exhibit A.**

### **ii. Interest**

**The State shall fully pay each invoice within Choose Number days of receipt thereof if the amount invoiced represents performance by Contractor previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Contractor shall invoice the State separately for accrued interest on**

delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

**iii. Available Funds-Contingency-Termination**

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Contractor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund this Contract, in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

**iv. Erroneous Payments**

At the State's sole 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, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the State and Contractor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

**C. USE OF FUNDS**

Contract Funds shall be used only for eligible costs identified herein and/or in the Budget.

**D. STATE OPTION TO INCREASE/DECREASE**

**i. Increase/Decrease Quantities**

At its sole discretion, the State, upon written notice to the Contractor in a form substantially equivalent to Exhibit C, may unilaterally increase/decrease the quantity of goods/services described in Exhibit A at the unit prices established in the contract. The State shall exercise the option by providing a fully executed option to the Contractor within 30 to 60 days before the option begins.

Delivery/performance of the goods/services shall continue at the same rate and under the same terms as established in the contract.

**ii. Increase/Decrease Total Contract Price**

At its sole discretion, the State, upon written notice to the Contractor in a form substantially equivalent to Exhibit C, may unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices established in the contract and the schedule of services required, as set by the State. The State shall exercise the option by providing a fully executed option to the Contractor. Delivery/performance of the goods/services shall continue at the same rate and under the same terms as established in the contract.

**E. PRICE**

Contractor's price, detailed in Exhibit B, shall be firm through the initial term of the contract. Requests for proposed price increases must be submitted a minimum of 90 days prior to the proposed effective date, with detailed supporting documentation/justification, to the Department of Transportation, Center for Procurement Office. Only one price increase will be considered during any contract term following the initial contract term. The State, in its sole discretion, may deem the cost/price increase request appropriate and may bilaterally amend the cost/price detailed in Exhibit B.(OR)Contractor's cost/price, detailed in Exhibit B, shall be firm through the entire term of the contract.

## **8. REPORTING-NOTIFICATION**

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

### **A. PERFORMANCE, PROGRESS, PERSONNEL, AND FUNDS**

Contractor shall comply with all reporting requirements, if any, set forth in **Exhibit A**.

### **B. LITIGATION REPORTING**

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

### **C. NONCOMPLIANCE**

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Contract.

### **D. SUBCONTRACTS**

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

## **9. CONTRACTOR RECORDS**

### **A. MAINTENANCE**

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three years after the date this Contract expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(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, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

### **B. INSPECTION**

Contractor shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period for a period of three years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform to the requirements of this Contract, the State may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

### **C. MONITORING**

Contractor shall permit the State, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

### **D. FINAL AUDIT REPORT**

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

## **10. CONFIDENTIAL INFORMATION-STATE RECORDS**

Contractor shall comply with the provisions on this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records,

personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101, et seq.

#### **A. CONFIDENTIALITY**

Contractor shall keep all State records and information confidential at all times and complies with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

#### **B. NOTIFICATION**

Contractor shall notify its agent, employees, Subcontractors and assigns that may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

#### **C. USE, SECURITY, AND RETENTION**

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in any way except as authorized by this Contract or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Contract or approved in writing by the State.

#### **D. DISCLOSURE-LIABILITY**

Disclosure of State records or other confidential information by Contractor for any reason 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 State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees pursuant to this **§10**.

### **11. CONFLICT OF INTEREST**

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is 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 to the State hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, 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 apparent conflict constitutes a breach of this Contract.

### **12. REPRESENTATIONS AND WARRANTIES**

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Contract.

#### **A. STANDARD AND MANNER OF PERFORMANCE**

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

#### **B. LEGAL AUTHORITY – CONTRACTOR SIGNATORY**

Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

#### **C. LICENSES, PERMITS, ETC.**

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the State or other adjustment in Contract Funds. Additionally, all

employees, agents, and Subcontractors of Contractor performing Services under this Contract shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is a material breach by Contractor and constitutes grounds for termination of this Contract.

### **13. INSURANCE**

Contractor and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

#### **A. CONTRACTOR**

##### **iii. Public Entities**

**If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Contractor shall maintain 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. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor's liabilities under the GIA**

##### **iv. Non-Public Entities**

**If Contractor is not a "public entity" within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Contract insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to subcontractors that are not "public entities".**

#### **B. CONTRACTORS - SUBCONTRACTORS**

**CONTRACTOR SHALL REQUIRE EACH CONTRACT WITH SUBCONTRACTORS OTHER THAN THOSE THAT ARE PUBLIC ENTITIES, PROVIDING GOODS OR SERVICES IN CONNECTION WITH THIS CONTRACT, TO INCLUDE INSURANCE REQUIREMENTS SUBSTANTIALLY SIMILAR TO THE FOLLOWING:**

##### **v. Worker's Compensation**

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Contractor or subcontractor employees acting within the course and scope of their employment.

##### **vi. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$1,000,000 general aggregate; **(c)** \$1,000,000 products and completed operations aggregate; and **(d)** \$50,000 any one fire.

##### **vii. 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.

##### **viii. Additional Insured**

**The State shall be named as additional insured on all Commercial General Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor and any subcontractors hereunder.**

##### **ix. Primacy of Coverage**

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

##### **x. Cancellation**



**The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Contractor's receipt of such notice.**

**xi. Subrogation Waiver**

**All insurance policies in any way related to this Contract and secured and maintained by Contractor or its subcontractors as required herein 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.**

**C. CERTIFICATES**

Contractor and all subcontractors shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Contract. No later than 15 days prior to the expiration date of any such coverage, Contractor and each subcontractors shall deliver to the State or Contractor certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Contract or any sub-contract, Contractor and each subcontractors shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

**14. BREACH**

**A. DEFINED**

In addition to any breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. 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 20 days after the institution or occurrence thereof, shall also constitute a breach.

**B. NOTICE AND CURE PERIOD**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**15. REMEDIES**

If Contractor is in breach under any provision of this Contract, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in §14(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. TERMINATION FOR CAUSE AND/OR BREACH**

The State may terminate this entire Contract or any part of this Contract. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

**xii. Obligations and Rights**

**To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder 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, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under 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 in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the**

State, shall be delivered by Contractor to the State and shall become the State's property.

**xiii. Payments**

The State shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the State, it is determined 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 the same as if this Contract had been terminated in the public interest, as described herein.

**xiv. 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 by virtue of any breach under this Contract by Contractor and the State may withhold any 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 loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. EARLY TERMINATION IN THE PUBLIC INTEREST**

The State is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Contract by the State for cause or breach by Contractor, which shall be governed by §15(A) or as otherwise specifically provided for herein.

**xv. Method and Content**

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

**xvi. Obligations and Rights**

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in §15(A) (i).

**xvii. Payments**

If this Contract is terminated by the State pursuant to this §15(B), Contractor shall be paid an amount which bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, 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 hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

**C. REMEDIES NOT INVOLVING TERMINATION**

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**xviii. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the State without

entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance 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 under this provision.

**xix. Withhold Payment**

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

**xx. Deny Payment**

Deny payment for those obligations not performed that due to Contractor's actions or inactions cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

**xxi. Removal**

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees, agents, or subcontractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the State's best interest.

**xxii. Intellectual Property**

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the State's option (a) obtain for the State or Contractor the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

**16. NOTICES and REPRESENTATIVES**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**A. CDOT:**

NAME AND TITLE OF PERSON

Department Name  
Address  
City, State, ZIP  
Phone  
Email

**AND CDOT:**

NAME AND TITLE OF PERSON

Department Name  
Address  
City, State, ZIP  
Phone  
Email

**B. CONTRACTOR:**

NAME AND TITLE OF PERSON

Company or Department Name  
Address  
City, State, ZIP  
Phone  
Email

**AND CONTRACTOR:**

NAME AND TITLE OF PERSON

Company or Department Name  
Address  
City, State, ZIP  
Phone  
Email

**17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State.

## **18. GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

## **19. 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 anytime thereafter, this §19 applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the CDOT, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

## **20. GENERAL PROVISIONS**

### **A. ASSIGNMENT AND SUBCONTRACTS**

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, subcontracting without such consent shall be void. All assignments, subcontracts, or subcontractors approved by Contractor or the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

### **B. BINDING EFFECT**

Except as otherwise provided in **§20(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **C. CAPTIONS**

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.

#### **D. COUNTERPARTS**

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

#### **E. ENTIRE UNDERSTANDING**

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

#### **F. INDEMNIFICATION**

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

#### **G. JURISDICTION AND VENUE**

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

#### **H. MODIFICATION**

##### **xxiii. By the Parties**

**Except as specifically provided in this Contract, modifications of this Contract shall not be effective unless agreed to in writing by both parties in an amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the Policies of the Office of the State Controller, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.**

##### **xxiv. By Operation of Law**

**This Contract is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.**

#### **I. ORDER OF PRECEDENCE**

The provisions of this Contract shall govern the relationship of the State and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

##### **xxv. Colorado Special Provisions,**

##### **xxvi. The provisions of the main body of this Contract,**

##### **xxvii. Exhibit A,**

##### **xxviii. Exhibit B,**

##### **xxix. Exhibit C.**

#### **J. SEVERABILITY**

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Contract in accordance with its intent.

#### **K. SURVIVAL OF CERTAIN AGREEMENT TERMS**

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

**L. TAXES**

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

**M. THIRD PARTY BENEFICIARIES**

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.

**N. WAIVER**

Waiver of any breach under a term, provision, or requirement of this Contract, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

**O. CORA DISCLOSURE**

To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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## 21. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Contracts except where noted in italics.

- A. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** THIS CONTRACT SHALL NOT BE VALID UNTIL IT HAS BEEN APPROVED BY THE COLORADO STATE CONTROLLER OR DESIGNEE.
- B. **FUND AVAILABILITY. CRS §24-30-202(5.5).** 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..
- C. **GOVERNMENTAL IMMUNITY.** 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, OF THE COLORADO GOVERNMENTAL IMMUNITY ACT, CRS §24-10-101 ET SEQ., OR THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. §§1346(B) AND 2671 ET SEQ., AS APPLICABLE NOW OR HEREAFTER AMENDED.
- 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 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. UNEMPLOYMENT INSURANCE BENEFITS WILL BE AVAILABLE TO CONTRACTOR AND ITS EMPLOYEES AND AGENTS ONLY IF SUCH COVERAGE IS MADE AVAILABLE BY CONTRACTOR OR A THIRD PARTY. CONTRACTOR SHALL PAY WHEN DUE ALL APPLICABLE EMPLOYMENT TAXES AND INCOME TAXES AND LOCAL HEAD TAXES INCURRED PURSUANT TO THIS CONTRACT. 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 SHALL **(A)** PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, **(B)** PROVIDE PROOF THEREOF WHEN REQUESTED BY THE STATE, AND **(C)** BE SOLELY RESPONSIBLE FOR ITS ACTS AND THOSE OF ITS EMPLOYEES AND AGENTS.
- E. **COMPLIANCE WITH LAW.** CONTRACTOR SHALL STRICTLY 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.** 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. ANY PROVISION INCORPORATED HEREIN BY REFERENCE WHICH PURPORTS TO NEGATE THIS OR ANY OTHER SPECIAL PROVISION IN WHOLE OR IN PART SHALL NOT BE VALID OR ENFORCEABLE OR AVAILABLE IN ANY ACTION AT LAW, WHETHER BY WAY OF COMPLAINT, DEFENSE, OR OTHERWISE. ANY PROVISION RENDERED NULL AND VOID BY THE OPERATION OF THIS PROVISION SHALL NOT INVALIDATE THE REMAINDER OF THIS CONTRACT, TO THE EXTENT CAPABLE OF EXECUTION.

- G. BINDING ARBITRATION PROHIBITED.** THE STATE OF COLORADO DOES NOT AGREE TO BINDING ARBITRATION BY ANY EXTRA-JUDICIAL BODY OR PERSON. ANY PROVISION TO THE CONTRARY IN THIS CONTACT OR INCORPORATED HEREIN BY REFERENCE SHALL BE NULL AND VOID.
- H. SOFTWARE PIRACY PROHIBITION. GOVERNOR'S EXECUTIVE ORDER D 002 00.** 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. CRS §§24-18-201 AND 24-50-507.** 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. CRS §§24-30-202(1) AND 24-30-202.4. [NOT APPLICABLE TO INTERGOVERNMENTAL AGREEMENTS]** SUBJECT TO CRS §24-30-202.4 (3.5), THE STATE CONTROLLER MAY WITHHOLD PAYMENT UNDER THE STATE'S VENDOR OFFSET INTERCEPT SYSTEM FOR DEBTS OWED TO STATE AGENCIES FOR: **(A)** UNPAID CHILD SUPPORT DEBTS OR CHILD SUPPORT ARREARAGES; **(B)** UNPAID BALANCES OF TAX, ACCRUED INTEREST, OR OTHER CHARGES SPECIFIED IN CRS §39-21-101, ET SEQ.; **(C)** UNPAID LOANS DUE TO THE STUDENT LOAN DIVISION OF THE DEPARTMENT OF HIGHER EDUCATION; **(D)** AMOUNTS REQUIRED TO BE PAID TO THE UNEMPLOYMENT COMPENSATION FUND; AND **(E)** OTHER UNPAID DEBTS OWING TO THE STATE AS A RESULT OF FINAL AGENCY DETERMINATION OR JUDICIAL ACTION.
- K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [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 DEPARTMENT PROGRAM ESTABLISHED PURSUANT TO CRS §8-17.5-102(5)(C), 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 **(A)** SHALL NOT USE E-VERIFY PROGRAM OR DEPARTMENT PROGRAM PROCEDURES TO UNDERTAKE PRE-EMPLOYMENT SCREENING OF JOB APPLICANTS WHILE THIS CONTRACT IS BEING PERFORMED, **(B)** SHALL NOTIFY THE SUBCONTRACTOR AND THE CONTRACTING STATE AGENCY WITHIN THREE DAYS IF CONTRACTOR HAS ACTUAL KNOWLEDGE THAT A SUBCONTRACTOR IS EMPLOYING OR CONTRACTING WITH AN ILLEGAL ALIEN FOR WORK UNDER THIS CONTRACT, **(C)** 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 **(D)** SHALL COMPLY WITH REASONABLE REQUESTS MADE IN THE COURSE OF AN INVESTIGATION, UNDERTAKEN PURSUANT TO CRS §8-17.5-102(5), 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 CRS §8-17.5-101 ET SEQ., 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. CRS §24-76.5-101.** CONTRACTOR, IF A NATURAL PERSON EIGHTEEN (18) YEARS OF AGE OR OLDER, HEREBY SWEARS AND AFFIRMS UNDER PENALTY OF PERJURY THAT HE OR SHE **(A)** IS A CITIZEN OR OTHERWISE LAWFULLY PRESENT IN THE UNITED STATES PURSUANT TO FEDERAL LAW, **(B)** SHALL COMPLY WITH THE PROVISIONS OF CRS §24-76.5-101 ET SEQ., AND **(C)** HAS PRODUCED ONE FORM OF IDENTIFICATION REQUIRED BY CRS §24-76.5-103 PRIOR TO THE EFFECTIVE DATE OF THIS CONTRACT.

Revised 1/1/09

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## 22. SIGNATURE PAGE

### THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;"><b>CONTRACTOR</b> Legal Name of Contractor</p> <p><b>By:</b> _____ Name of Authorized Individual</p> <p><b>Title:</b> _____ Official Title of Authorized Individual</p> <p style="text-align: center;">_____ <b>*Signature</b></p> <p><b>Date:</b> _____ 2nd Contractor Signature if Needed</p> <p><b>By:</b> _____ Name of Authorized Individual</p> <p><b>Title:</b> _____ Official Title of Authorized Individual</p> <p style="text-align: center;">_____ <b>*Signature</b></p> <p><b>Date:</b> _____</p>	<p style="text-align: center;"><b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b></p> <p style="text-align: center;">Department of Transportation (for) Donald E. Hunt, Executive Director</p> <p><b>By:</b> _____ Name and Title</p> <p style="text-align: center;">_____ <b>Signature</b></p> <p><b>Date:</b> _____</p> <p style="text-align: center;"><b>LEGAL REVIEW</b> John W. Suthers, Attorney General</p> <p><b>By:</b> _____ <b>Signature - Assistant Attorney General</b></p> <p><b>Date:</b> _____</p>
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### ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER  
Robert Jaros, CPA, MBA, JD**

**By:** \_\_\_\_\_

**INSERT-Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval**

**Date:** \_\_\_\_\_

# EXHIBIT A

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## STATEMENT OF WORK

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**EXHIBIT B**

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**PRICES AND RATES**

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**EXHIBIT C**

**SAMPLE OPTION LETTER**

<b>Date:</b>	<b>State Fiscal Year:</b>	<b>Option Letter No.</b>	<b>Routing #</b>
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1) **OPTIONS:** (Choose all applicable options listed in §1 and in §2 and delete the rest.)

- (a) **Option to renew only for an additional term.**
- (b) **Change in the amount of goods within current term**
- (c) **Change in amount of goods in conjunction with renewal for additional term**
- (d) **Level of service change within current term**
- (e) **Level of service change in conjunction with renewal for additional term**
- (f) **Option to initiate next phase in a contract**

2) **PROVISIONS:** (All Option Letters shall contain the appropriate provisions set forth below :)

**(For use with Options 1(a-e) :** In accordance with Section(s) \_\_\_\_\_ of the original Contract routing number \_\_\_\_\_ between the State of Colorado, Department of Transportation, and Contractor's Name, covering the term Insert Orig start date through Insert Current ending date, the State hereby exercises its option for an additional term beginning Insert Option start date and ending on Insert New ending date at a cost/price specified in Identify the Section, Schedule, Attachment, Exhibit etc, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Identify the Section, Schedule, Attachment, Exhibit etc.

**(For use with Option 1(f), please use the following :)** In accordance with Section(s) \_\_\_\_\_ of the Original Contract routing number \_\_\_\_\_ between the State of Colorado, Department of Transportation, and Contractor's Name, the State hereby exercises its option to initiate Phase indicate Phase: 2, 3, etc for the term beginning Insert start date and ending on Insert ending date at the cost/price specified in Section \_\_\_\_\_.

**(For use with all Options 1(a-f) :)** The amount of the current Fiscal Year contract Choose Language (if change to contract value is increased/decreased by \$ amount of change to a new) (if time only remains unchanged with a) contract Choose Language of Insert New \$ Amt to as consideration for services/goods ordered under the contract for the current fiscal year indicate Fiscal Year. (if change to contract value The first sentence in Section \_\_\_\_\_ is hereby modified accordingly.)

Requisition #	CDOT Document #	Doc Line #	WBS or Fund Center #	Change Amount

The total contract value including all previous amendments, option letters, etc. is Insert New \$ Amt.

3) **EFFECTIVE DATE.** The effective date of this Option Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

<p><b>STATE OF COLORADO</b>  <b>John W. Hickenlooper, GOVERNOR</b>                  Department of Transportation</p> <p>By: _____                  (For) Donald E. Hunt, Executive Director</p> <p>Date: _____</p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_

Department of Transportation

Date: \_\_\_\_\_