AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Intergovernmental Master Contract; Colorado Depart

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: BOCC & CO Dept Public Health & Environment

Term Begins: 7/1/2017 **Term Ends:** 6/30/2022 **Grant Contract #:**

Summary:

Master contract establishes Terms & Conditions for how CDPHE issues Task Orders for individual projects through CDPHE divisions. Statements of Work and Budgets are to be included in Task Order Contracts.

Fiscal Impact: per individual contracts

Submitted by: C Worrall **Submitter's Email Address:** cworrall@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 12/20/2016

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok - gs

Reveiwed by: GUNCOUNTY1\gstuhr Discharge Date: 12/22/2016 Certificate of Insurance Required Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 12/28/2016

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 1/10/2017

Revised April 2015

COLORADO
Department of Public Health & Environment

Instructions for processing master contract

1. Contract Document

Print –Please print **2** copies of the PDF contract document attached to this email. Double sided printing is encouraged but optional. Single sided copies will be accepted.

2. Obtain signatures

Each of the 2 contract documents must be signed by the signature authority for your organization. Original signatures are required. Please use blue ink if possible.

In the case that the **individual signing your contract document is NOT listed below** as the signature authority for your entity type, please provide one copy of a **Signature Authority Letter** or other regulatory document (resolution, charter, ordinance, etc.) confirming the individual has the authority to enter into contracts on behalf of the organization. An example is found on the second page of this instruction sheet.

- **Counties** – Board of County Commissioners Chairperson or Executive Director
- **County or District Board of Health** – Board of Health President or Executive Director

3. Submission

Please return the 2 signed contract documents and the Signature Authority documentation (if applicable) to the address below. Hard copies are required. No scanned or emailed copies will be accepted.

You may hand deliver your documents, send them by mail, or use a courier or delivery service such as FedEx or UPS. The use of a delivery service allows for overnight shipping if needed and provides tracking and delivery confirmation information. Hand delivery may be made to the CDPHE Mail Room in Building B between the hours of 8:00am – 5:00pm, Monday through Friday. You will be provided a receipt for your delivery.

Colorado Department of Public Health & Environment
Procurement and Contract Section, Bldg C
Attention: Erin Hensley
4300 Cherry Creek Drive South
Denver, CO 80246-1520

4. Contract review and approval

Once received, the contracts will be reviewed and approved by CDPHE. We will notify you by email when the contract is fully executed and will return a copy by mail for your records.

<Insert Entity's Letterhead>

Signature Authority Letter

(insert name of entity) exists as a non-profit corporate entity and as such does not have a President or Vice-President, but instead is governed by a Board of Directors. In addition, **(insert name of entity)** operates under the leadership of **(insert name of individual signing the contract)**, our Executive Director. **(insert name of individual signing the contract)** has the authority to sign contracts on behalf of **(insert name of entity)** which are binding

_____
Signature

_____
Print Name

Board President
Title

_____
Date

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

CMS ROUTING NO. 18 FAAA 00023

INTERGOVERNMENTAL MASTER CONTRACT

STATE:
State of Colorado for the use & benefit of the
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246

CONTRACTOR:
Board of County Commissioners of Gunnison County
(a political subdivision of the State of Colorado)
200 East Virginia Avenue, Gunnison, CO 81230-2297
for the use and benefit of theGunnison County
Department of Health and Human Services
225 North Pine Street, Suite E, Gunnison, CO 81230-2333

CONTRACTOR DUNS:

CONTRACTOR ENTITY TYPE:
Political Subdivision

CONTRACT MADE DATE: 11/23/2016

TERM:
This Contract shall be effective upon approval by the State Controller, or designee, or on 07/01/2017, whichever is later. The Contract shall end on 06/30/2022.

STATUTORY AUTHORITY:

CLASSIFICATION: >select one<

ZERO COST MASTER CONTRACT

PROCUREMENT METHOD:
Exempt

BID/RFP/LIST PRICE AGREEMENT NUMBER:
n/a

LAW SPECIFIED VENDOR STATUTE:
n/a

STATE REPRESENTATIVE:
Lisa McGovern
4300 Cherry Creek Drive South
Denver, CO 80246

CONTRACTOR REPRESENTATIVE:
Carol Worrall, Director of Public Health
225 North Pine Street, Suite E
Gunnison, CO 81230-2333

PROJECT DESCRIPTION:
The intent of this Master Contract is to set forth the general contract terms and conditions between the parties and to define how the parties will contract with each other in the future using the Task Order Contract process as defined in the Master Contract.

EXHIBITS:

The following exhibits are hereby incorporated:

Exhibit One -	Additional Provisions (and any of its Attachments)
Exhibit Two -	Task Order Contract Template (and its Exhibit A and Exhibit B)

COORDINATION:

The State warrants that required approval, clearance and coordination has been accomplished from and with appropriate agencies. Section 29-1-203, C.R.S., as amended, encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other to the fullest extent possible to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting entities.

APPROVAL:

In no event shall this Contract be deemed valid until it shall have been approved by the State Controller or his/her designee.

PROCUREMENT:

All State of Colorado contracts with its political subdivisions and other governmental entities are exempt from the State of Colorado's personnel rules and procurement code.

PRICE PROVISIONS:

Payments pursuant to this Contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services and/or deliverables. The liability of the State at any time for such payments shall be limited to the encumbered amount remaining of such funds.

Authority exists in the laws and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment.

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

STATEMENTS OF WORK:

Statements of Work and Budgets are to be included in Task Order Contracts.

GENERAL PROVISIONS

The following clauses apply to this Contract. In some instances, these general clauses have been expanded upon in other sections/exhibits of/to this Contract. To the extent that other provisions of the Contract provide more specificity than these general clauses, the more specific provision shall control.

1. Governmental Immunity. Notwithstanding any other provision to the contrary, 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, protection or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 et.seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 et.seq. CRS and the risk management statutes, Section 24-30-1501, et.seq, CRS as now or hereafter amended.

2. Available Funds Contingency

   a. Available Funds. 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. 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 available amount remaining of such encumbered funds. In the event that state funds become unavailable for this Contract, as determined by the State, the State may immediately terminate this Contract or amend it accordingly.
   b. Federal Funds Contingency. Payment pursuant to this Contract, if in federal funds, whether in whole or in part, is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. In the event that said funds, or any part thereof, become unavailable, as determined by the State, the State may immediately terminate this Contract or amend it accordingly without liability including liability for termination costs.

3. Billing Procedures. The State shall establish billing procedures and requirements for payment due the Contractor in providing performance pursuant to this Contract. The Contractor shall comply with the established billing procedures and requirements for submission of billing statements. The State shall comply with CRS 24-30-202(24) when paying vendors upon receipt of a correct notice of the amount due for goods or services provided hereunder.

4. Exhibits - Interpretation. Unless otherwise stated, all referenced exhibits and all Task Order Agreements entered into pursuant to the Contract, are incorporated herein and made a part of this Contract. Unless otherwise stated, the terms of this Contract shall control over any conflicting terms in any of its exhibits. In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) the Special Provisions of this Contract; 2) the Additional Provisions **Exhibit One** and its attachments, if included; 3) the Contract (other than the Special Provisions); 4) the Task Order Contract and its **Exhibit A and Exhibit B** and its attachments, if included; 5) other exhibits/attachments in their order of appearance.

5. Notice and Representatives. For the purposes of this Contract, the representative for each party is as designated herein. Any notice required or permitted may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address provided, and if sent by mail it is effective when posted in a U.S. Mail Depository with sufficient postage attached thereto. Notice of change of address or change or representative shall be treated as any other notice.

6. Contractor Representations - Qualifications/Licenses/Approvals/Insurance. The Contractor certifies that, at the time of entering into this Contract, it and its agents have currently in effect all necessary licenses, certifications, approvals, insurance, etc. required to properly provide the services and/or supplies covered by this Contract in the state of Colorado. Proof of such licenses, certifications, approvals, insurance, etc. shall be provided upon the State's request. Any revocation, withdrawal or non-renewal of necessary license, certification, approval, insurance, etc. required for the Contractor to properly perform this Contract, shall be grounds for termination of this Contract by the State.

Contractor certifies that it is qualified to perform such services or provide such deliverables as delineated in this Contract.

7. Legal Authority. The Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and bind the Contractor to its terms. The person(s) executing this Contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this Contract.

8. Insurance – Contractor. The Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act (CGIA), section 24-10-101, *et seq.*, C.R.S., as amended. Therefore, at all times during the initial term of this Contract, and any renewals or extensions hereof, the Contractor shall maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the CGIA. If requested by the State, the Contractor shall provide the State with written proof of such insurance coverage.

9. Rights in Data, Documents and Computer Software or Other Intellectual Property. All intellectual property including without limitation, databases, software, documents, research, programs and codes, as well as all, reports, studies, data, photographs, negatives or other documents, drawings or materials prepared by the Contractor in the performance of its obligations under this Contract shall be the exclusive property of the State. Unless otherwise stated, all such material shall be delivered to the State by the Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of the Contractor's obligations under this Contract without the prior written consent of the State. All documentation, accompanying the intellectual property or otherwise, shall comply with the State requirements which include but is not limited to all documentation being in a paper, human readable format which is useable by one who is reasonably proficient in the given subject area. Software documentation shall be delivered by Contractor to the State that clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between code programmed in different programming languages. The documentation shall contain source code which describes the program logic, relationship between any internal functions, and identifies the disk files which contain the various parts of the code. Files containing the source code shall be delivered and their significance to the program described in the documentation. The documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated. The Contractor warrants that the delivered software will be sufficiently descriptive to enable maintenance and modification of the software. The State's ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

   If any material is produced under this Contract and the parties hereto mutually agreed that said material could be copyrighted by Contractor or a third party, then the State, and any applicable federal funding entity, shall, without additional cost, have a paid in full, irrevocable, royalty free, and non-exclusive license to reproduce, publish, or otherwise use, and authorize others to use, the copyrightable material for any purpose authorized by the Copyright Law of the United States as now or hereafter enacted. Upon the written request of the State, the Contractor shall provide the State with three (3) copies of all such copyrightable material.

10. Confidential or Proprietary Information. Subject to the Public (Open) Records Act, section 24-72-101, *et seq.*, C.R.S., as amended, if the Contractor obtains access to any records, files, or other information of the State in connection with, or during the performance of, this Contract, then the Contractor shall keep all such records, files, or other information confidential and shall comply with all laws and regulations concerning the confidentiality of all such records, files, or information to the same extent as such laws and regulations apply to the State. Contractor shall protect the confidentiality of all information accessed, used, held, created or received in connection with this Contract and shall insure that any subcontractors or agents of Contractor protect the confidentiality of all information under this Contract. Contractor shall access, use and disclose confidential information only for the operation and administration of the Contract, and shall not directly or indirectly disclose confidential information after the term of the Contract. Contractor shall implement appropriate safeguards as are necessary to prevent accidental or unauthorized use or disclosure of confidential information and shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards for maintaining and transmitting

electronic confidential information. Contractor shall promptly notify the State if Contractor breaches the confidentiality of any information covered by this Contract. Any breach of confidentiality by the Contractor, or third party agents of the Contractor, shall constitute good cause for the State to cancel this Contract, without liability to the State. Any State waiver of an alleged breach of confidentiality by the Contractor, or third party agents of the Contractor, does not constitute a waiver of any subsequent breach by the Contractor, or third party agents of the Contractor.

The Contractor must identify to the State the information that it considers confidential or proprietary. This is a continuing obligation. Confidential or proprietary information for the purpose of this paragraph is information relating to Contractor's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, information which is in the public domain, or information which is or could have been acquired/developed independently by the State or a third party. Notwithstanding the foregoing, the State shall not be in violation of its obligations under this section should it disclose confidential information if such disclosure is, in the sole opinion of the State's legal counsel, required by applicable law and/or legal process (including, but not limited to, disclosures required pursuant to the Colorado (Open) Public Records Act, sections 24-72-201, *et. seq*, C.R.S., as now or hereafter amended). The State shall endeavor to provide notice to the Contractor, as promptly as practicable under the circumstances, of any demand, request, subpoena, court order or other action requiring such disclosure, in order to afford Contractor the opportunity to take such lawful action as it deems appropriate to oppose, prevent or limit the disclosure, solely at its own instance and expense; but nothing herein shall be construed to require the State to refuse or delay compliance with any such law, order or demand.

11. Records Maintenance, Performance Monitoring & Audits. The Contractor shall maintain a complete file of all records, documents, communications, and other materials that pertain to the operation of the program/project or the delivery of services under this Contract. Such files shall be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies and services, and other costs of whatever nature for which a contract payment was made. These records shall be maintained according to generally accepted accounting principles and shall be easily separable from other Contractor records.

The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with this Contract. Except as provided by law, no information in possession of the Contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, guardian, or the State. The Contractor shall have written policies governing access to, duplication and dissemination of, all such information and advise its agents, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its agents, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.

The Contractor authorizes the State, the federal government or their designee, to perform audits and/or inspections of its records, at any reasonable time during the term of this Contract and for a period of six (6) years following the termination of this Contract, to assure compliance with the state or federal government's terms and/or to evaluate the Contractor's performance. Any amounts the State paid improperly shall be immediately returned to the State or may be recovered in accordance with other remedies.

All such records, documents, communications, and other materials shall be the property of the State unless otherwise specified herein and shall be maintained by the Contractor in a central location as custodian for the State on behalf of the State, for a period of six (6) years from the date of final payment or submission of the final federal expenditure report under this Contract, unless the State requests that the records be retained for a longer period, or until an audit has been completed with the following qualification. If an audit by or on behalf of the federal and/or state government has begun but is not completed at the end of the six (6) year period, or if audit findings have not been resolved after a six (6) year period, the materials shall be retained until the resolution of the audit findings.

The Contractor shall permit the State, any other governmental agency authorized by law, or an authorized designee thereof, in its sole discretion, to monitor all activities conducted by the Contractor pursuant to the terms of this Contract. Monitoring may consist of internal evaluation procedures, reexamination of program data, special analyses, on-site verification, formal audit examinations, or any other procedures as deemed

reasonable and relevant. All such monitoring shall be performed in a manner that will not unduly interfere with contract work.

12. Taxes. The State, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. 39- 26-114(a) and 203, as amended]. The Contractor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

13. Conflict of Interest. During the term of this Contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Contractor fully performing his/her obligations under this Contract.

Additionally, the Contractor acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the State. Thus, the Contractor agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Contractor's fully performing his/her obligations to the State under the terms of this Contract, without the prior written approval of the State.

In the event that the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the State a full disclosure statement setting forth the relevant details for the State's consideration and direction. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict shall be grounds for termination of the Contract.

Further, the Contractor, and its subcontractors or subgrantees, shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of the Contractor, subcontractor, or subgrantee shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer or agent;
b. Any member of the employee's immediate family;
c. The employee's partner; or
d. An organization which employees, or is about to employ, any of the above,

has a financial or other interest in the firm selected for award. The Contractor's, subcontractor's, or subgrantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor's potential contractors, or parties to subagreements.

14. Inspection and Acceptance (Services) and Contractor Warranty. The State reserves the right to inspect services provided under this Contract at all reasonable times and places during the term of the Contract. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform to Contract requirements, the State may require the contractor to perform the services again in conformity with contract requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the State may (1) require the contractor to take necessary action to ensure that the future performance conforms to contract requirements and (2) equitably reduce the payment due the contractor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this Contract, or remedies otherwise available at law.

Contractor warrants that all supplies furnished under this Contract shall be free from defects in materials or workmanship, are installed properly and in accordance with manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Contractor shall, at its option, repair or replace any supplies that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the State all written manufacturer warranties relating to the supplies and to deliver such written warranties to the State.

15. Adjustments in Price. Adjustments to contract prices are allowable only so long as they are mutually agreeable by the parties and so long as they are included within a contract amendment made prior to the effective date of

the price adjustments and made pursuant to the State of Colorado Fiscal Rules, signed by the parties, and approved by the State Controller or designee. The Contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data Section of the Colorado State Procurement Rules. Any adjustment in contract price pursuant to the application of a clause in this Contract shall be made in one or more of the following ways:

a. By agreement on a fixed-price adjustment;
b. By unit prices specified in the Contract;
c. In such other manner as the parties may mutually agree; or
d. In the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee.

16. Contract Modifications. This Contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Contract on the effective date of such change as if fully set forth herein. If either the State or the Contractor desires to modify the terms and conditions of this Contract, then the parties shall execute a standard written amendment to this Contract initiated by the State. The standard written amendment must be executed and approved in accordance with all applicable laws and rules by all necessary parties including the State Controller or delegate.

17. Litigation. The Contractor shall within five (5) calendar days after being served with a summons, complaint, or other pleading which has been filed in any federal or state court or administrative agency notify the State that it is a party defendant in a case which involves services provided under this Contract. The Contractor shall deliver copies of such document(s) to the State's Executive Director. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization and/or foreclosure.

18. Notice of Breach and Dispute Resolution: If the State or the Contractor believes in good faith that the other party has failed to timely complete a deliverable, or has otherwise committed a material breach of this Contract, then the non-breaching party shall notify the breaching party in writing of the alleged breach within ten (10) business days of: 1) the date of the alleged breach if the non-breaching party is aware of the breach at the time it occurs; or 2) the date that the non-breaching party becomes aware of the breach.

Upon receipt of written notice of an alleged breach of the Contract, the breaching party shall have ten (10) business days, or such additional time as may be agreed to in writing between the parties, within which to cure the alleged breach or to notify the non-breaching party in writing of the breaching party's belief that a material breach of this Contract has not occurred. Failure of the breaching party to cure or respond in writing within the above time period shall result in the non-breaching party being entitled to pursue any and all remedies available at law or in equity.

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff designated by the department and a senior manager designated by the Contractor. Failing resolution at that level, disputes shall be presented in writing to the Executive Director and the Contractor's chief executive officer for resolution. This process is not intended to supersede any other process for the resolution of controversies provided by law.

The Contractor and its sureties shall be liable for any damage to the State resulting from the Contractor's breach, whether or not the Contractor's right to proceed with the work is terminated. The State reserves the right, in its sole discretion, to determine whether or not to accept substituted performance tendered by the Contractor or the Contractor's sureties and acceptance is dependent upon completion of all applicable inspection procedures.

19. Remedies: In addition to any other remedies provided for in this Contract, and without limiting its remedies otherwise available at law, the State may exercise the following remedial actions if the Contractor substantially fails to satisfy or perform the duties and obligations in this Contract. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Contractor. Without limitation, these remedial actions include:

a. withhold payment to Contractor until the necessary services or corrections in performance are satisfactorily completed; and/or
b. require the vendor to take necessary action to ensure that the future performance conforms to contract requirements; and/or
c. request the removal from work on the Contract of employees or agents of Contractor whom the State justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on the Contract the State deems to be contrary to the public interest or not in the best interest of the State; and/or
d. deny payment for those services or obligations which have not been performed and which due to circumstances caused by Contractor cannot be performed, or if performed would be of no value to the State; denial of the amount of payment must be reasonably related to the value of work or performance lost to the State; and/or
e. suspend Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
f. modify or recover payments (from payments under this Contract or other contracts between the State and the vendor as a debt due to the State) to correct an error due to omission, error, fraud and/or defalcation; and/or
g. terminate the Contract.

These remedies in no way limit the remedies available to the State in the termination provisions of this Contract, or remedies otherwise available at law.

20. Termination.

a. Termination for Default. The State may terminate the Contract for cause. In the event this Contract is terminated for cause, the State will only reimburse the Contractor for accepted work or deliverables received up to the date of termination. In the event this Contract is terminated for cause, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Contractor is determined. If it is determined that the Contractor was not in default then such termination shall be treated as a termination for convenience as described herein. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this Contract.

b. Termination for Convenience. The State shall have the right to terminate this Contract at any time the State determines necessary by giving the Contractor at least twenty (20) calendar days prior written notice. If notice is so given, this Contract shall terminate on the expiration of the specified time period, and the liability of the parties hereunder for further performance of the terms of this Contract shall thereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and supplies delivered.

In the event that the State terminates this Contract under the Termination for Convenience provisions, the Contractor is entitled to submit a termination claim within ten (10) days of the effective date of termination. The termination claim shall address and the State shall consider paying the following costs:

I. the contract price for performance of work, which is accepted by the State, up to the effective date of the termination;
II. reasonable and necessary costs incurred in preparing to perform the terminated portion of the contract;

III. reasonable profit on the completed but undelivered work up to the date of termination;
IV. the costs of settling claims arising out of the termination of subcontracts or orders, not to exceed 30 days pay for each subcontractor;
V. reasonable accounting, legal, clerical, and other costs arising out of the termination settlement.

In no event shall reimbursement under this clause exceed the contract amount reduced by amounts previously paid by the State to the Contractor.

c. Immediate Termination. This Contract is subject to immediate termination, in whole or in part, by the State without further liability in all of the following circumstances:

I. In the event that the State determines that the health, safety, or welfare of persons receiving services may be in jeopardy;
II. Upon verifying that the Contractor has engaged in or is about to participate in fraudulent or other illegal acts; or
III. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract.

21. Stop Work Order. Upon written approval by the State Procurement Officer or delegee, the State may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this Contract. This order shall be for a specified period after the order is delivered to the Contractor. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurring of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, as legally extended, the State Procurement Officer or delegee shall either:

a. Cancel the stop work order; or
b. Terminate the work covered by such order; or
c. Terminate the contract.

If a stop work order issued under this clause is properly canceled, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified accordingly in writing pursuant to the terms of this Contract dealing with contract modifications, if:

a. The stop work order results in increased time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
b. The Contractor asserts claim for such an adjustment within thirty (30) days after the end of the period of work stoppage.

If the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and such adjustment shall be in accordance with the Price Adjustment Clause of this Contract.

22. Venue. The parties agree that exclusive venue for any action related to performance of this Contract shall be in the City and County of Denver, Colorado.

23. Understanding of the Parties.

a. Complete Integration. This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.

b. Severability. To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for

any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

c. Binding Agreement. Except as herein specifically provided otherwise, it is expressly understood and agreed that this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. All rights of action relating to enforcement of the terms and conditions shall be strictly reserved to the State and the named Contractor. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

d. Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

e. Continuing Obligations. The State and the Contractor's obligations under this Contract shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.

f. Assignment and Change In Ownership, Address, Financial Status. Except as herein specifically provided otherwise, the rights, duties and obligations of the Contractor arising hereunder cannot be assigned, delegated, subgranted or subcontracted except with the express prior written consent of the State, which consent shall not be unreasonably withheld. In the case of assignment or delegation, Contractor and the State shall execute the standard State novation agreement prior to the assignment or delegation being effective against the State. The subgrants and subcontracts permitted by the State shall be subject to the requirements of this Contract. The Contractor is responsible for all subcontracting arrangements, delivery of services, and performance of any subgrantor or subcontractor. The Contractor warrants and agrees that any subgrant or subcontract, resulting from its performance under the terms and conditions of this Contract, shall include a provision that the said subgrantor or subcontractor shall abide by the terms and conditions hereof. Also, the Contractor warrants and agrees that all subgrants or subcontracts shall include a provision that the subgrantor or subcontractor shall indemnify and hold harmless the State. The subgrantors or subcontractors must be certified to work on any equipment for which their services are obtained.

This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by section 4-9-318, CRS, provided that written notice of assignment adequate to identify the rights assigned is received by the controller for the agency, department, or institution executing this Contract. Such assignment shall not be deemed valid until receipt by such controller – as distinguished from the State Controller – and the Contractor assumes the risk that such written notice of assignment is received by the controller for the agency, department, or institution involved.

The Contractor is required to formally notify the State prior to, or if circumstances do not allow prior notification then immediately following, any of the following:

I. change in ownership;
II. change of address;
III. the filing of bankruptcy.

g. Force Majeure. Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by “force majeure.” As used in this Contract “force majeure” means acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods, epidemics; quarantine restrictions, strikes or other labor disputes; freight embargoes; or unusually severe weather.

h. Changes In Law. This Contract is subject to such modifications as may be required by changes in applicable federal or State law, or their implementing rules, regulations, or procedures. Any such

required modification shall automatically be incorporated into and be part of this Contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Contract shall be effective unless agreed to in writing by both parties in the form of a written amendment to this Contract that has been previously executed and approved in accordance with applicable law.

i. Media or Public Announcements. Unless otherwise provided for in this Contract, the Contractor shall not make any news release, publicity statement, or other public announcement, either in written or oral form that concerns the work provided under this Contract, without the prior written approval of the State. The Contractor shall submit a written request for approval to the State no less than ten (10) business days before the proposed date of publication. The State shall not unreasonably withhold approval of the Contractor's written request to publish. Approval or denial of the Contractor's request by the State, shall be delivered to the Contractor in writing within six (6) business days from the date of the State's receipt of Contractor's request for approval.

If required by the terms and conditions of a federal or state grant, the Contractor shall obtain the prior approval of the State and all necessary third parties prior to publishing any materials produced under this Contract. If required by the terms and conditions of a federal or state grant, the Contractor shall also credit the State and all necessary third parties with assisting in the publication of any materials produced under this Contract. It shall be the obligation of the Contractor to inquire of the State as to whether these requirements exist and obtain written notification from the State as Contractor deems appropriate.

24. Intellectual Indemnity. Contractor shall defend, at its sole expense, any claim(s) or suit(s) brought against the State alleging that the use by the State of any product(s), or any part thereof, supplied by Contractor under this agreement constitutes infringement of any patent, copyright, trademark, or other proprietary rights, provided that the State gives Contractor written notice within twenty (20) days of receipt by the State of such notice of such claim or suit, provides assistance and cooperation to Contractor in connection with such action, and Contractor has sole authority to defend or settle the claim. Contractor shall consult the State regarding such defense and the State may, at its discretion and expense, participate in any defense. Should the State not choose to participate, Contractor shall keep the State advised of any settlement or defense.

Contractor shall have liability for all such claims or suits, except as expressly provided herein, and shall indemnify the State for all liability incurred by the State as a result of such infringement. Contractor shall pay all reasonable out-of-pocket costs and expenses, and damages finally awarded by a court of competent jurisdiction, awarded or agreed to by Contractor regarding such claims or suits.

If the product(s), or any part thereof, become the subject of any claim, suit or proceeding for infringement of any patent, trademark or copyright, or in the event of any adjudication that the product(s), or any part thereof, infringes any patent, trademark or copyright, or if the sub-license or use of the product(s), or any part thereof, is enjoined, Contractor, after consultation with the State, shall do one of the following at Contractor's expense:

a. produce for the State the right under such patent, trademark or copyright to use or sub-license, as appropriate, the product or such part thereof; or

b. replace the product(s), or part thereof, with other suitable products or parts conforming to the original license and State specifications; or

c. suitably modify the products, or part thereof.

Except as otherwise expressly provided herein, Contractor shall not be liable for any costs or expenses incurred without its prior written authorization.

Contractor shall have no obligation to defend against or to pay any costs, damages or attorney's fees with respect to any claim based upon:

a. the use of an altered release if Contractor had not consented to the alteration; or

b. the combination, operation or use of the product(s) with programs or data which were not furnished by Contractor, if such infringement would have been avoided if the programs or data

furnished by persons or entities other than Contractor had not been combined, operated or used with the product(s); or

c. the use of product(s) on or in connection with equipment or software not permitted under this Contract if such infringement would have been avoided by not using the product(s) on or in connection with such other equipment or software.

25. Conformance with Law. If this Contract involves federal funds or compliance is otherwise federally mandated, the Contractor and its agent(s) shall at all times during the term of this Contract strictly adhere to all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Without limitation, these federal laws and regulations include:

a. Office of Management and Budget Circulars and The Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable;

b. the "Hatch Act" (5 U.S.C. 1501-1508) and Public Law 95-454, Section 4728

c. when required by Federal program legislation, the "Davis-Bacon Act", as amended (40 U.S.C. 3141-3148) as supplemented by Department of Labor Regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction");

d. when required by Federal program legislation, the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building of Public Work Financed in Whole or in Part by Loans or Grants from the United States").

e. 42 U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794 (regarding discrimination);

f. the "Americans with Disabilities Act" (Public Law 101-336; 42 U.S.C. 12101, 12102, 12111 - 12117, 12131 - 12134, 12141 - 12150, 12161 - 12165, 12181 - 12189, 12201 - 12213 and 47 U.S.C. 225 and 47 U.S.C. 611);

g. if the Contractor is acquiring an interest in real property and displacing households or businesses in the performance of this Contract, then the Contractor is in compliance with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act", as amended, (Public Law 91-646, as amended, and Public Law 100-17, 101 Stat. 246 - 256);

h. when applicable, the Contractor shall comply with the provisions of the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (Common Rule);

i. Section 2101 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355; and

j. If the Contractor is a covered entity under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d – 1320d-8, the Contractor shall comply with applicable HIPAA requirements. **If Contractor is a business associate under HIPAA, Contractor hereby agrees to, and has an affirmative duty to, execute the State's current HIPAA Business Associate Agreement. In this case, Contractor must contact the State's representative and request a copy of the Business Associate Agreement, complete the agreement, have it signed by an authorized representative of the Contractor, and deliver it to the State.**

k. The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required there under. This Act is also referred to as FFATA.

l. Contractor shall comply with the provisions of Section 601 of Title VI of the Civil Rights Act of 1964, as amended.

m. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 comply with the equal opportunity clause provided under 41 CFR 60-1.3(b), in accordance with Executive Order 11246, "Equal Employment Opportunity: (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

n. where applicable, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

o. if the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into an agreement with a small business firm or nonprofit organization, comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants,

Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

p. the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.

q. if applicable, comply with the mandatory standards and policies on energy efficiency contained within the State of Colorado's energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201.

26. Contractor Affirmation. If this Contract involves federal funds or compliance is otherwise federally mandated, then by signing and submitting this Contract the Contractor affirmatively avers that:

a. the Contractor is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. 701 et seq.);

b. the Contractor and all principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; the Contractor and all principals shall comply with all applicable regulations pursuant to Executive Order 12549 (3 CFR Part 1986 Comp., p. 189) and Executive Order 12689 (3 CFR Part 1989 Comp., p. 235), Debarment and Suspension; and,

c. the Contractor shall comply with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including, Certification and Disclosure, 29 C.F.R. 93.110(1990) and where applicable, the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

27. Annual Audits. If the Contractor expends federal funds from all sources (direct or from pass-through entities) in an amount of $750,000 or more during its fiscal year, then the Contractor shall have an audit of that fiscal year in accordance with Office of Management and Budget (OMB) Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). If the Contractor expends federal funds received from the State in an amount of $750,000 or more during its fiscal year, then the Contractor shall furnish one (1) copy of the audit report(s) to the State's Internal Audit Office within thirty (30) calendar days after the Contractor's receipt of its auditor's report or nine (9) months after the end of the Contractor's audit period, whichever is earlier. If (an) instance(s) of noncompliance with federal laws and regulations occurs, then the Contractor shall take all appropriate corrective action(s) within six (6) months of the issuance of (a) report(s).

28. Holdover. In the event that the State desires to continue the services provided for in this Contract and a replacement contract has not been fully executed by the expiration date of the Contract, this Contract may be extended unilaterally by the State for a period of up to two (2) months upon written notice to the Contractor under the same terms and conditions of the original Contract including, but not limited to, prices, rates, and service delivery requirements. However, this extension terminates when the replacement contract becomes effective when signed by the State Controller or an authorized delegate.

29. Survival of Certain Contract Terms. Notwithstanding anything in this Contract to the contrary, the parties understand and agree that all terms and conditions of this Contract which may require continued performance, compliance, or effect beyond the termination date of the Contract and shall survive such termination date and shall be enforceable by the State as provided herein in the event of failure to perform or comply by the Contractor.

30. **STATEWIDE CONTRACT MANAGEMENT SYSTEM** *[This section shall apply when the Effective Date is on or after July 1, 2009 and the maximum amount payable to Contractor hereunder is $100,000 or higher]*

By entering into this Contract, 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 evaluated 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 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 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 the Statement of Project of this Contract. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and a final review and rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation determine that Contractor demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Public Health and Environment and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (ii) 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.

31. Performance Outside the State of Colorado and/or the United States

[Not applicable if Contract Funds include any federal funds]
Following the Effective Date, Contractor shall provide written notice to the State, in accordance with the Notices and Representatives provision, within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this provision shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this provision shall constitute a material breach of this Contract.

SPECIAL PROVISIONS

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

1. **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.

2. **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.

3. **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.

4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. 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.

12. 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

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.**

CONTRACTOR:

BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY for the use and benefit of the GUNNISON COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES

Legal Name of Contracting Entity

Print Name of Authorized Officer

Signature of Authorized Officer

Date

Print Title of Authorized Officer

STATE OF COLORADO:

JOHN W. HICKENLOOPER, GOVERNOR

By: _____

For Executive Director

Department of Public Health and Environment

LEGAL REVIEW

Cynthia H. Coffman, Attorney General

By: _____

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: _____

Date: _____

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ADDITIONAL PROVISIONS
To Contract Effective Date 7/1/2017 **- Contract Routing Number 18 FAA 00023**

These provisions are to be read and interpreted in conjunction with the provisions of the contract specified above.

1. It is the express intent of the parties in entering into this Contract to: a) create a vehicle through which the parties can enter into a simplified Task Order Contract for the purchase and delivery of health and environmental services; b) stipulate that the Contractor is an approved entity to perform certain activities for the State; and c) set forth the terms and conditions under which these activities shall be performed by the Contractor.

   In the context of this Contract a "Task Order Contract" means a subordinate document to this Contract that is signed by the State and the Contractor and approved by the State Controller or delegee, and has attached to it a Statement of Work and Budget that has been signed by the applicable State and Contractor program managers. A sample Task Order Contract is attached hereto as **Exhibit Two** and incorporated herein by this reference. The parties expressly acknowledge that while this Contract authorizes the purchase of health and environmental services pursuant to its terms and conditions, no specific purchase of services is made by this Contract. The State may purchase health and environmental services from the Contractor and the Contractor may provide health and environmental services to the State, under this Contract through a Task Order Contract. A Task Order Contract incorporates by reference all the terms and conditions of this Contract. When the State and the Contractor mutually agree upon the services to be purchased from and performed by, the Contractor, the parties may enter into a Task Order Contract, with an accompanying Statement of Work and Budget, for the purchase and delivery of those services. The State's financial obligation to the Contractor for specific health and environmental services accrues only upon the full execution, including approval by the State Controller or delegee, of a Task Order Contract authorizing the Contractor to perform and deliver those services and the Contractor's performance of the work described in that Task Order Contract.

   The State will issue a Task Order Contract to perform some or all the work if, and when, and to the extent, the State determines, in its sole discretion, that the work is needed and that the Contractor should perform that work. The State does not guarantee a certain quantity of the work to the Contractor and shall have no obligation to provide any work to the Contractor, and the Contractor has no justifiable expectancy that it will be given any of the work unless and until the State and the Contractor enter into a Task Order Contract, including an attached Statement of Work and Budget, and the Task Order Contract is approved by the State Controller or designee. The State may elect to perform some or all the work itself, hire other vendors by separate contract to meet State requirements or not perform the work, without liability to the Contractor.

2. The parties expressly acknowledge that this Contract sets forth the general and special contractual terms and conditions of the parties, and that Task Order Contracts issued pursuant to this Contract set forth the specific work contracted for by the State with the Contractor. Each Task Order Contract incorporates by reference all terms and conditions of this Contract and each provision of this Contract shall become part of, and control, each separate Task Order Contract. Subject to the terms and conditions of this Contract, the Scope of Work in a Task Order Contract shall govern the delivery services by the Contractor under that Task Order Contract. However, a Task Order Contract cannot change any of the terms and conditions of this Contract. In the event of any conflict between the terms and conditions of this Contract and a Task Order Contract and/or a Statement of Work attached thereto, the terms and conditions of this Contract shall control. A Task Order Contract only describes the work to be performed under its accompanying Statement of Work and Budget. The Contractor is authorized only to provide and perform those services that have been authorized in a given Task Order the Contract's Statement of Work. The period of performance of any Task Order Contract may exceed the performance period allowed under this Contract, but in no case can the period of performance of any Task Order Contract exceed five (5) years.

3. Task Order Contracts may be renewed, extended, and/or modified by way of the Contract Amendment process outlined in the Task Order Contract, in accordance with State fiscal rules. However, as mentioned above, in no case can a Task Order Contract or any Task Order Contract amendment modify the terms and conditions of this Contract. Any changes to this Contract must be done pursuant to the terms and conditions of the General Provisions of this Contract.

4. Work/services will be defined, negotiated, and ordered from time to time by a Task Order Contract between the parties. If the State has need of services and determines that the Contractor is the appropriate entity to provide those services, the State will contact the appropriate representatives of the Contractor and discuss the services needed. The State shall provide a definition of the requirements to the Contractor. The State and the Contractor will negotiate a statement of work, budget, including applicable time frames for work performance and associated costs. The State will then memorialize the agreed upon statement of work and budget within the Task Order Contract.

5. Upon negotiation and agreement by the parties regarding the scope of the project, the price/cost ceiling, the time for performance and other applicable terms and conditions, a Task Order Contract, in substantially the form attached herein as Exhibit Two, shall be prepared by the State. Following acceptance of the Task Order Contract terms and conditions, which must include the negotiated Statement of Work and Budget, the total hours anticipated to adequately and successfully completing the work, method of payment and project plan, the authorized representatives of the Contractor will sign a minimum of three (3) Task Order Contract originals. Upon signature by the State and the State Controller or delegee and delivery of a fully signed original Task Order Contract to the Contractor, the Contractor shall undertake performance of the specified projects and will perform such projects in a manner inspiring confidence that such projects will be

successfully completed within the time frame and price range agreed to in the Task Order Contract. The Contractor may be required to provide the State with reports to include invoices of actual hours of service and a statement of the various project's status. To ensure delivery of the services required under this Contract, the State may elect to conduct an evaluation of the Contractor's performance of the work on a periodic basis.

6. Performance of work and payment for a project shall be governed by the standards, procedures and terms set forth in this Contract and in the associated Task Order Contract. The Contractor warrants that upon negotiation and acceptance of the Task Order Contract, the Contractor's performance will be successfully completed within the time frame and price stated in the Task Order Contract. The State's financial commitment stated in the Task Order Contract shall not be considered valid until the State Controller or a delegate executes the Task Order Contract, a fully signed Task Order Contract is received by the Contractor, and Contractor commences performance under the specific Task Order Contract.

7. The Contractor shall be assigned work on a Task Order Contract basis, and shall begin performance of assigned tasks only upon receipt of a fully executed Task Order Contract setting forth the specific work to be performed.

8. The Contractor, with the prior approval of the State, may subcontract the performance of some, or all, of the services provided under a Task Order Contract through a subcontract, teaming, joint venture and/or partnership arrangement or other affiliate arrangement, as determined by the Contractor. However, in all cases the Contractor shall remain solely responsible to the State for the timely and complete performance of all contract deliverables. The Contractor shall cause all of its subcontractors and affiliates to comply with all terms and conditions of this Contract and the applicable Task Order Contract. The Contractor, at the request of the State, shall provide background information with respect to all subcontractors and affiliates, the Contractor desires to utilize or include in the performance of work under any Task Order Contract.

Exhibit 2

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

CMS ROUTING NO. *** **********

APPROVED TASK ORDER CONTRACT – WAIVER #154

This task order contract is issued pursuant to master contract made on mm/dd/yyyy, with routing number xxxxxxxxxxxxxxxxxxx.

STATE:
State of Colorado for the use & benefit of the
Department of Public Health and Environment

CONTRACTOR:

CONTRACTOR DUNS:

CONTRACTOR ENTITY TYPE:
Political Subdivision

CONTRACT MADE DATE:

CORE ENCUMBRANCE NUMBER:
****

BILLING STATEMENTS RECEIVED:
>select one<

TERM:

This contract shall be effective upon approval by the State Controller, or designee, or on mm/dd/yyyy, whichever is later. The contract shall end on mm/dd/yyyy.

STATUTORY AUTHORITY:

CLASSIFICATION: >select one<

CONTRACT PRICE NOT TO EXCEED:

FEDERAL FUNDING DOLLARS:

STATE FUNDING DOLLARS:

OTHER FUNDING DOLLARS:

Specify "Other":

PROCUREMENT METHOD:
>select one<

BID/RFP/LIST PRICE AGREEMENT NUMBER:

MAXIMUM AMOUNT AVAILABLE PER FISCAL YEAR:
FY**:
FY**:
FY**:
FY**:
FY**:

LAW SPECIFIED VENDOR STATUTE:

STATE REPRESENTATIVE:

PRICE STRUCTURE: >select one<

CONTRACTOR REPRESENTATIVE:

PROJECT DESCRIPTION:
>Insert a brief summary of the statutory or regulatory requirements of the program and its intended outcome<

SAMPLE

EXHIBITS:

The following exhibits are hereby incorporated:

Exhibit A -	Additional Provisions (and any of its Attachments; e.g., A-1, A-2, etc.)
Exhibit B -	Statement of Work (and any of its Attachments; e.g., B-1, B-2, etc.)
Exhibit C -	Budget (and any of its Attachments; e.g., C-1, C-2, etc.)

SAMPLE

GENERAL PROVISIONS

The following clauses apply to this Task Order Contract. These general clauses may have been expanded upon or made more specific in some instances in exhibits to this Task Order Contract. To the extent that other provisions of this Task Order Contract provide more specificity than these general clauses, the more specific provision shall control.

1. This Task Order Contract is being entered into pursuant to the terms and conditions of the Master Contract including, but not limited to, Exhibit One thereto. The total term of this Task Order Contract, including any renewals or extensions, may not exceed five (5) years. The parties intend and agree that all work shall be performed according to the standards, terms and conditions set forth in the Master Contract.

2. In accordance with section 24-30-202(1), C.R.S., as amended, this Task Order Contract is not valid until it has been approved by the State Controller, or an authorized delegee thereof. The Contractor is not authorized to, and shall not; commence performance under this Task Order Contract until this Task Order Contract has been approved by the State Controller or delegee. The State shall have no financial obligation to the Contractor whatsoever for any work or services or, any costs or expenses, incurred by the Contractor prior to the effective date of this Task Order Contract. If the State Controller approves this Task Order Contract on or before its proposed effective date, then the Contractor shall commence performance under this Task Order Contract on the proposed effective date. If the State Controller approves this Task Order Contract after its proposed effective date, then the Contractor shall only commence performance under this Task Order Contract on that later date. The initial term of this Task Order Contract shall continue through and including the date specified on page one of this Task Order Contract, unless sooner terminated by the parties pursuant to the terms and conditions of this Task Order Contract and/or the Master Contract. Contractor's commencement of performance under this Task Order Contract shall be deemed acceptance of the terms and conditions of this Task Order Contract.

3. The Master Contract and its exhibits and/or attachments are incorporated herein by this reference and made a part hereof as if fully set forth herein. Unless otherwise stated, all exhibits and/or attachments to this Task Order Contract are incorporated herein and made a part of this Task Order Contract. Unless otherwise stated, the terms of this Task Order Contract shall control over any conflicting terms in any of its exhibits. In the event of conflicts or inconsistencies between the Master Contract and this Task Order Contract (including its exhibits

and/or attachments), or between this Task Order Contract and its exhibits and/or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: 1) the Special Provisions of the Master Contract; 2) the Master Contract (other than the Special Provisions) and its exhibits and attachments in the order specified in the Master Contract; 3) this Task Order Contract; 4) the Additional Provisions - **Exhibit A**, and its attachments if included, to this Task Order Contract; 5) the Scope/Statement of Work - **Exhibit B**, and its attachments if included, to this Task Order Contract; 6) other exhibits/attachments to this Task Order Contract in their order of appearance.

4. The Contractor, in accordance with the terms and conditions of the Master Contract and this Task Order Contract, shall perform and complete, in a timely and satisfactory manner, all work items described in the Statement of Work and Budget, which are incorporated herein by this reference, made a part hereof and attached hereto as "**Exhibit B**" and "**Exhibit C**".

5. The State, with the concurrence of the Contractor, may, among other things, prospectively renew or extend the term of this Task Order Contract, subject to the limitations set forth in the Master Contract, increase or decrease the amount payable under this Task Order Contract, or add to, delete from, and/or modify this Task Order Contract's Statement of Work through a contract amendment. To be effective, the amendment must be signed by the State and the Contractor, and be approved by the State Controller or an authorized delegate thereof. This contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Task Order Contract on the effective date of such change as if fully set forth herein.

6. The conditions, provisions, and terms of any RFP attached hereto, if applicable, establish the minimum standards of performance that the Contractor must meet under this Task Order Contract. If the Contractor's Proposal, if attached hereto, or any attachments or exhibits thereto, or the Scope/Statement of Work - Exhibit B, establishes or creates standards of performance greater than those set forth in the RFP, then the Contractor shall also meet those standards of performance under this Task Order Contract.

7. **STATEWIDE CONTRACT MANAGEMENT SYSTEM** *[This section shall apply when the Effective Date is on or after July 1, 2009 and the maximum amount payable to Contractor hereunder is $100,000 or higher]*

By entering into this Task Order Contract, 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 evaluated in accordance with the terms and conditions of this Task Order Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation 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 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 Task Order Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Statement of Project of this Task Order Contract. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and a final review and rating shall be rendered within 30 days of the end of the Task Order Contract term. Contractor shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation determine that Contractor demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Public Health and Environment and showing of good cause, may debar Contractor and

SAMPLE

prohibit Contractor from bidding on future contracts. Contractor may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (ii) 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.

8. If this Contract involves federal funds or compliance is otherwise federally mandated, the Contractor and its agent(s) shall at all times during the term of this contract strictly adhere to all applicable federal laws, state laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Without limitation, these federal laws and regulations include the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6062 of Public Law 110-252, including without limitation all data reporting requirements required there under. This Act is also referred to as FFATA.

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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.**

CONTRACTOR:

_____
Legal Name of Contracting Entity

_____
Print Name of Authorized Officer

_____
Signature of Authorized Officer

_____
Date

_____
Print Title of Authorized Officer

STATE OF COLORADO:
JOHN W. HICKENLOOPER, GOVERNOR

By: _____
For Executive Director
Department of Public Health and Environment

Department Program Approval:

By: _____

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ALL CONTRACTS MUST BE APPROVED 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: _____

Date _____

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