

DEPARTMENT OF PUBLIC HEALTH  
AND ENVIRONMENT

ROUTING NO. 15 FEA 59747

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**INTERGOVERNMENT CONTRACT WITH THE CITY AND COUNTY OF DENVER**

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STATE:

State of Colorado for the use & benefit of the  
Department of Public Health and Environment  
Hazardous Materials and Waste Management  
Division  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530

CONTRACT MADE DATE:

06/16/2014

PO/SC ENCUMBRANCE NUMBER:

TERM:

This contract shall be effective upon approval  
by the State Controller, or designee, or on  
07/01/2014, whichever is later. The contract  
shall end on 12/31/2015.

PROCUREMENT METHOD:

Exempt

BID/RFP/LIST PRICE AGREEMENT NUMBER:

Not Applicable

LAW SPECIFIED VENDOR STATUTE:

Not Applicable

STATE REPRESENTATIVE:

Susan Newton  
CDPHE – HMWMD – RP – B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

SCOPE OF WORK:

Provide Natural Resource Damage (NRD) funds for the Westerly Creek Greenway Project in  
Denver, CO for stream restoration within New Freedom Park and the reach of Westerly Creek to  
the south of E. 12<sup>th</sup> Avenue.

CONTRACTOR:

City and County of Denver  
Department of Parks and Recreation  
201 West Colfax Avenue. Dept 613  
  
Denver, Colorado 80202

CONTRACTOR ENTITY TYPE:

Colorado Political Subdivision

BILLING STATEMENTS RECEIVED:

Monthly

STATUTORY AUTHORITY:

C.R.S. 25-16-104.7

CONTRACT PRICE NOT TO EXCEED:

\$ 500,000.00

FEDERAL FUNDING DOLLARS: \$ 0.00

STATE FUNDING DOLLARS: \$ 500,000.00

MAXIMUM AMOUNT AVAILABLE PER FISCAL YEAR:

FY 15: \$ 500,000.00

PRICE STRUCTURE:

Cost Reimbursement

CONTRACTOR REPRESENTATIVE:

David Marquardt  
Planning Supervisor  
201 W. Colfax., Dept. 613  
Denver, CO 80202

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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.)

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COORDINATION:

The State warrants that required approval, clearance and coordination have 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.

The City and County of Denver (Contractor) does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the City and County of Denver.

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## 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 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 A** and its attachments if included; 3) the Contract (other than the Special Provisions); 4) the RFP if applicable and attached; 5) the Scope/Statement of Work **Exhibit B** and its attachments if included; 6) the Contractor's proposal if applicable and attached; 7) other exhibits/attachments in their order of appearance.

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 Contract. If the Contractor's Proposal, if attached hereto, or any attachments or exhibits thereto, or the Scope/Statement of Work Exhibit B, establish or create standards of performance greater than those set forth in the RFP, then the Contractor shall also meet those standards of performance under this Contract.

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. 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. Contractor shall protect the confidentiality of all information 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 use and disclose confidential information only for purposes of this Contract and for the operation and administration of the Contractor. Contractor shall implement appropriate safeguards as are necessary to prevent the use of disclosure of confidential information and shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards for the electronic transmission of confidential information which are appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. Contractor shall promptly notify the State if Contractor breaches the confidentiality of any information covered by this Contract.

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.

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 employs, 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 with 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 reasonable 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 reasonable 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 A-21, A-87, A-102, A-110, A-122, A-133, 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. These federal statutes declare that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs;
- c. the "Davis-Bacon Act" (40 U.S.C. 276A-276A-5). This federal Act requires that all laborers and mechanics employed by contractors or subcontractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor;
- d. 42 U.S.C. 6101 *et seq.*, 42 U.S.C. 2000d, 29 U.S.C. 794. These federal Acts mandate that no person shall, on the grounds of race, color, national origin, age, or disability, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or in part, by federal funds;

- e. 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);
  - f. 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);
  - g. 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);
  - h. Section 2101 of the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, which prohibits the use of federal money to lobby the legislative body of a political subdivision of a State; and
  - i. 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.**
  - j. 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 thereunder. This Act is also referred to as FFATA.
  - k. Contractor shall comply with the provisions of Section 601 of Title VI of the Civil Rights Act of 1964, as amended, which states that “no person in the United States shall on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program actively receiving Federal financial assistance.” The Office for Civil Rights has established that it is the responsibility of any program that is a recipient of federal funds to ensure that any Limited English Proficient (LEP) person or beneficiary have meaningful access to programs, services and information. The Contractor and contract personnel shall adopt and implement policies and procedures in which reasonable steps are taken to provide language assistance in order to ensure equal access to LEP persons or beneficiaries. The Contractor and contract personnel shall advise LEP individuals that language assistance will be provided at no cost to the LEP person or beneficiary.
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, including, Debarment and Suspension and Participants’ Responsibilities, 29 C.F.R. 98.510 (1990); 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).
27. Annual Audits. If the Contractor expends federal funds from all sources (direct or from pass-through entities) in an amount of \$500,000 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 \$500,000 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).

If the Contractor submits an annual indirect cost proposal to the State for review and approval, then the Contractor's auditor shall audit the proposal in accordance with the requirements of OMB Circulars A-21 (Cost Principles for Educational Institutions), A-87 (Cost Principles for State, Local, and Tribal Governments), or A-122 (Cost Principles for Non-Profit Organizations), whichever is applicable.

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. The City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the City.
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

- 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 extrajudicial body or person. Any provision to the contrary in this contract 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.

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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:  
**CITY AND COUNTY OF DENVER**  
(a political subdivision of the State of Colorado)

\_\_\_\_\_  
Legal Name of Contracting Entity

STATE OF COLORADO:  
**JOHN W. HICKENLOOPER,**  
**GOVERNOR**

By: \_\_\_\_\_  
For Executive Director

**Department of Public Health and Environment**

(see incorporated Supplemental Signature Page attachment)  
Signature of Authorized Officer

Department Program Approval:

(see incorporated Supplemental Signature Page attachment)  
Print Name & Title of Authorized Officer

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

**LEGAL REVIEW**  
**John W. Suthers, Attorney General**

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

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

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

By \_\_\_\_\_

Date \_\_\_\_\_

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**ADDITIONAL PROVISIONS**  
**To Contract Dated 06/16/2014 - Contract Routing Number 15 FEA 59747**

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

1. This contract contains state funds.

The state funds come from the Natural Resource Damage (NRD) Recovery Fund authorized by C.R.S. 25-16-104.7, as amended. The purpose of the NRD fund is to provide for the restoration, replacement, or acquisition of natural resources which have been injured, destroyed, or lost as a result of the release of hazardous substances (hereinafter collectively referred to as "restoration").

The NRD funds come from the Consent Decree, 10-CV-01303-JLK.

The State Natural Resources Trustees for the Lowry Landfill ("Trustees") Resolution is attached hereto as, **Attachment A-1**, has awarded funds to Contractor for this Project.

2. To receive compensation under the Contract, the Contractor shall submit a signed **Monthly** Invoice Form. The Invoice Form must be submitted no later than **forty-five (45)** calendar days after the end of the billing period for which services were rendered. Expenditures shall be in accordance with the Statement of Work and Budget.

The Contractor shall submit the following documentation with the completed invoice: (1) certified payrolls for which reimbursement is sought; (2) receipts for reimbursable expenses; (3) copies of all subcontractor invoices; (4) project progress reports/narratives; and (5) all other materials requested by the HMWMD Project Manager reasonably necessary to support an invoice.

Susan Newton, Project Manager  
 CDPHE – HMWMD – RP – B2  
 4300 Cherry Creek Drive South  
 Denver, CO 80246-1530  
 303-692-3321  
[Susan.newton@state.co.us](mailto:Susan.newton@state.co.us)

Scan the completed and signed Invoice Form and supporting documentation into an electronic document. Email the Invoice form and supporting documentation to the HMWMD Project Manager.

Final billings under the Contract must be received by the State within a reasonable time after the expiration or termination of the Contract; but in any event no later than **forty-five (45)** calendar days from the effective expiration or termination date of the Contract.

3. Time Limit For Acceptance Of Deliverables.
  - a. Evaluation Period. The State shall have **fifteen (15)** calendar days from the date a deliverable is delivered to the State by the Contractor to evaluate that deliverable, except for those deliverables that have a different time negotiated by the State and the Contractor.
  - b. Notice of Defect. If the State believes in good faith that a deliverable fails to meet the design specifications for that particular deliverable, or is otherwise deficient, then the State shall notify the Contractor of the failure or deficiencies, in writing, within **ten (10)** calendar days of: 1) the date the deliverable is delivered to the State by the Contractor if the State is aware of the failure or deficiency at the time of delivery; or 2) the date the State becomes aware of the failure or deficiency. The above time frame shall apply to all

deliverables except for those deliverables that have a different time negotiated by the State and the Contractor in writing pursuant to the State's fiscal rules.

- c. Time to Correct Defect. Upon receipt of timely written notice of an objection to a completed deliverable, the Contractor shall have a reasonable period of time, not to exceed **fifteen (15)** calendar days, to correct the noted deficiencies.
4. Health Insurance Portability and Accountability Act (HIPAA) Business Associate Determination. The State has determined that this contract does not constitute a Business Associate relationship under HIPAA.
5. The State and the Contractor agree that General Provision 24, Intellectual Indemnity, Page 11 of the Original Contract, is hereby modified and replaced with the following Provision.

Intellectual Property. In the event of 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: 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.

**COLORADO NATURAL RESOURCE TRUSTEE  
RESOLUTION July \_\_\_, 2013**

**LOWRY LANDFILL NATURAL RESOURCE DAMAGES FUND:  
ALLOCATION of FUNDS for RESTORATION, REPLACEMENT AND  
CONSERVATION PROJECTS**

**WHEREAS**, the trustees for State and natural resource damages (the “Trustees”) settled with the principal responsible parties at the Lowry Landfill Superfund Site (the “Site”) for natural resource damage (“NRD”) claims set forth in the Consent Decree approved by the U.S. District Court for the District of Colorado Civil Case No. 10-CV-1303;

**WHEREAS**, the Consent Decree ordered the primary responsible parties of the Site to pay the State a NRD settlement in the amount of \$1,106,930.00 for asserted injury to Colorado Natural Resources caused by the operations of the Lowry Landfill;

**WHEREAS**, funds paid to the State pursuant to the Consent Decree have been paid and placed in the Lowry Landfill Natural Resource Damage Recovery Subaccount of the NRD Recovery Fund (“State Fund”), an interest bearing account within the State Treasury; and

**WHEREAS**, the Colorado Natural Resource Trustees are responsible for the management and direction of Colorado’s natural resource damages program.

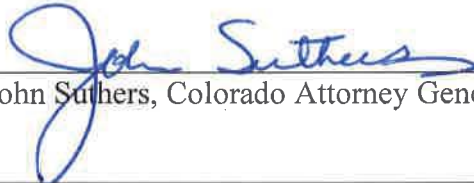
**NOW THEREFORE**, the Colorado Natural Resource Trustees resolve as follows:

The Trustees agree as follows:

(A) Fund Allocation: The Trustees do hereby approve the following Restoration Projects and fund allocations:

- (1) The City and County of Denver shall receive from the State Fund a total amount of \$114,500.00 to fund the Bear Creek Water Quality Project as set forth in its proposal, which includes matching funds in the amount of \$135,369.00;
- (2) The City and County of Denver shall receive from the State Fund a total amount of \$500,000.00 to fund the Westerly Creek Greenway Project as set forth in its proposal, which includes matching funds in the amount of \$500,000.00; and
- (3) The Ridge View Academy Charter School shall receive from the State Fund a total of \$44,257.88 to fund the RVA Non-Controller Water Conservation Upgrades project as set forth in its proposal; and

- (B) The Fund Allocations above shall be used only for environmental restoration projects as outlined in each of the proposals submitted to the Trustee staff in response to the January 2013 Superfund Site Natural Resource Damages Request for Application HAZ-HJ130122.
- (C) Each recipient described in Paragraph A above will continue to consult with Trustee staff during the implementation of the Restoration Projects.
- (D) If matching funds are required in Paragraph A, above, or set forth in the proposal, the recipient must show proof of matching funds before the funds will be remitted.
- (E) The funds will be available on a reimbursement basis and remitted pursuant to the State's NRDs fund distribution policy and standard State contracting procedures.
- (F) The recipients shall provide periodic updates to the Trustees on the progress of the projects.

  
\_\_\_\_\_  
John Suthers, Colorado Attorney General

7/17/2013  
Date

\_\_\_\_\_  
Martha Rudolph,  
Director of Environmental Programs, CDPHE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Robert Randall, Deputy Director, DNR

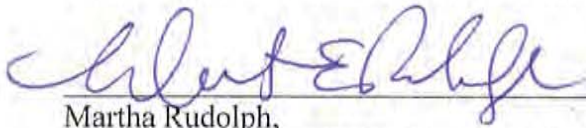
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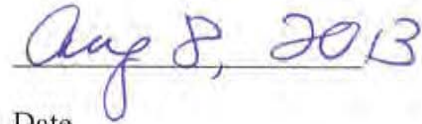
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John Suthers, Colorado Attorney General

\_\_\_\_\_  
Date



\_\_\_\_\_  
Martha Rudolph,  
Director of Environmental Programs, CDPHE



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Date


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Robert Randall, Deputy Director, DNR

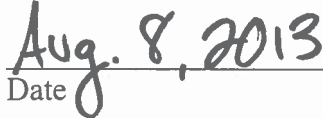
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\_\_\_\_\_  
John Suthers, Colorado Attorney General

\_\_\_\_\_  
Date

\_\_\_\_\_  
Martha Rudolph,  
Director of Environmental Programs, CDPHE  
  
\_\_\_\_\_  
Robert Randall, Deputy Director, DNR

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Date  
  
Date

**STATEMENT OF WORK**  
**To Intergovernmental Agreement Dated 06/16/2014 - Contract Routing Number 15 FEA 59747**

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

**I. Project Description:**

The NRD funds will be used for stream restoration and improvements to Denver's Westerly Creek Greenway within New Freedom Park and the reach of Westerly Creek to the south of E. 12<sup>th</sup> Avenue (the "Project"). These improvements will include slowing the flow of the creek to create micro-aquatic habitat that will improve water quality, water temperature, regrading of bank slopes, erosion controls, and the reintroduction of native plant species, including shrubs and trees. The effects of this project is to increase filtration of surface water by filtering out sediment and pollutants, erosion reduction, and restoration of riparian and wildlife habitats.

The Project site will be maintained into the future by the Contractor and by the Urban Drainage and Flood Control District ("UDFCD").

**II. Performance Requirements/Deliverables:**

A. The Project is divided into 4 major Deliverables:

- Deliverable #1: Improve water quality
- Deliverable #2: Removal of invasive species
- Deliverable #3: Stream bank stabilization
- Deliverable #4: Habitat Restoration

B. The Contractor shall achieve these Deliverables by completing the following:

1. Obtain all necessary permits for the type of work to be completed and/or Project Area;
2. Create and deliver to the HMWMD Project Manager a schedule of construction activities;
3. Create a detailed budget of the Project, which shows all activities, construction, purchased items/goods/etc., quantities, unit costs, and indicating funding source. The detailed budget must be submitted to the HMWMD Project manager for final approval to assure compliance with established NRD policy and guidance;
4. Construct diverse wetlands with native wetland plant species, including shrubs and trees, to filter pollutants and sediment;
5. Contract and coordinate for the survey and removal of any noxious weeds and woody invasive species;
6. Design and contract to stabilize and re-vegetate creek banks to withstand high flow events and to reduce erosion;
7. Plant native plant and tree species in the Project Area to replace the noxious weed populations and restore wildlife habitat;
8. Create plans necessary for the future operations and maintenance of the Project Area. These plans shall include, at a minimum:
  - a. Noxious weed control;
  - b. Erosion control;
  - c. Sampling and monitoring of pollutants and sediment in the Project Area.
9. The Contractor shall sample the Project Area at least annually or on another schedule as agreed upon by the HMWMD Project Manager.
  - a. The annual sampling shall take place no later than September 15 of each calendar year.
  - b. The Contractor shall deliver the sampling results to the HMWMD Project Manager within 45 days of the sampling event.
  - c. Sampling shall be for any pollutants of interest, as agreed upon between the Contractor and the HMWMD Project Manager;

10. The Contractor shall create partnerships within other entities, such as, governmental and non-governmental organizations for the future operations and maintenance of the Project Area to help create stewards of the Project Area.

#### C. Reporting

1. The Contractor shall provide monthly reports to the HMWMD Project Manager. Reports are due, either:
  - a. With invoices, and the invoice and progress reports shall cover the same period,
  - b. If no invoices are to be submitted for a period, a single calendar month, then a report shall be generated. This report shall be due even if no activities or reportable events take place for that period.
2. Reports, and any supporting materials or documents, may be submitted electronically.
3. Reports to the HMWMD Project Manager shall include, at a minimum but not limited to:
  - a. Copies of any new, updated, revised, etc. conceptual drawings/designs of the Project Area;
  - b. Copies of any reports generated for project partners;
  - c. Copies of public meeting minutes concerning the project. This shall be redacted to include only relevant minutes;
  - d. Summary of activities in furtherance of the Project;
  - e. Updated Project Schedule;
  - f. Updated Budget;
  - g. Itemized listing by entity of contributions/match charges/payments/in-kind services rendered;
  - h. Digital photos of construction activities;
  - i. Sampling results, if any.

#### D. Notification

The Contractor shall notify the HMWMD Project Manager at least 7 business days prior to the commencement of any major construction activities, public events concerning the Project or Project Area.

#### E. Final Reporting to NRD Trustees

Upon completion of the Project, the Contractor shall make a live report back to the NRD Trustees at the earliest, convenient opportunity. NRD Trustees meetings are not regularly schedule and may result in a significant time gap between completion and live report. A brief overview of the Project and "Before and After" photos are highly desired.

### III. Monitoring:

CDPHE's monitoring of this contract for compliance with performance requirements will be conducted throughout the contract period by the HMWMD Project Manager. Methods used will include review of documentation reflective of performance to include progress reports and site visits, inspections, etc. The Contractor's performance will be evaluated at set intervals and communicated to the contractor. A Final Contractor Performance Evaluation will be conducted at the end of the life of the contract.

### IV. Resolution of Non-Compliance:

The Contractor will be notified by email within 15 calendar days) of discovery of a compliance issue. Within 30 calendar days of discovery, the Contractor and the State will collaborate, when appropriate, to determine the action(s) necessary to rectify the compliance issue and determine when the action(s) must be completed. The action(s) and time line for completion will be documented by email and agreed to by both parties. If extenuating circumstances arise that requires an extension to the time line, the Contractor must email a request to the HMWMD Project Manager and receive approval for a new due date. The State will oversee the completion/implementation of the action(s) to ensure time lines are met and the issue(s) is resolved. If the Contractor demonstrates inaction or disregard for the agreed upon compliance resolution plan, the State may exercise its rights under the Remedies section of the General Provisions of this contract.

**BUDGET**  
**To Intergovernmental Agreement Dated 06/16/2014 - Contract Routing Number 15 FEA 59747**

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

<b>Project Item</b>		<b>Total Cost</b>	<b>Match Funds</b>	<b>NRD Funds</b>
Contract Services				
Project Elements*	Urban Drainage	\$250,000	\$250,000	
Project Elements*	Denver Parks	\$250,000	\$250,000	
Project Elements*	NRD Construction	\$500,000		\$500,000
	Totals	\$1,000,000	\$500,000	\$500,000

\*Project Elements include:

Earthwork, Erosion Control, Rip rap and creek bank stabilization, boulder walls, irrigation for establishment of native grasses and shrub areas, native tree plantings, shrub area plantings, willow stakes, dryland seeding, wetland seeding, and other construction elements as permitted by NRD guidance and approved by the HMWMD Project Manager.

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**ATTEST: [if required]**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

