

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB 13-0505

SERIES OF 2013

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Grant Agreement between the City and County of Denver and the State of Colorado related to Transportation, Community, and System Preservation Program at Denver International Airport.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The proposed Grant Agreement between the City and County of Denver and the State of Colorado in the words and figures contained and set forth in that form in the above-named Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2013-0655 is hereby approved.

COMMITTEE APPROVAL DATE: August 1, 2013

MAYOR-COUNCIL DATE: August 6, 2013

PASSED BY THE COUNCIL: _____, 2013

- PRESIDENT

APPROVED: _____ - MAYOR _____, 2013

ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

PREPARED BY: Debra Overn, Assistant City Attorney,  DATE: September 5, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: _____, Assistant City Attorney

DATE: September 5, 2013

STATE OF COLORADO
Colorado Department of Transportation
Division of Transportation Development
Transportation, Community, and System Preservation Program
Grant Agreement
with
City and County of Denver

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1. PARTIES

This Grant ("Grant") is entered into by and between the City & County of Denver ("Grantee"), by and on behalf of its Department of Aviation ("Aviation"), and the STATE OF COLORADO acting by and through the Colorado Department of Transportation, Division of Transportation Development ("State" or "CDOT"). Grantee and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee ("Effective Date"). Except as provided in Section 7(B)(v), the State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in CRS §§43-1-106, 43-1-110; 43-1-117, 43-1-224, 43-2-101(4)(c), 30-28-105, 29-1-203 and funds have been budgeted, appropriated and otherwise made available pursuant to MAP-21, SAFETEA_LU § 1117, 23 USC §104, and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

SAFETEA_LU § 1117, provides funds to State, Metropolitan Planning Organizations, local governments, and tribal governments for eligible projects that integrate the relationships among transportation, community, and system preservation plans and practices and identify private sector-based initiatives to improve such relationships.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

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

A. Budget

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

B. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in §6 and §19.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work & Budget), **Exhibit B** (Supplemental Requirements for **Exhibit A**), **Exhibit C** (Payment and Billing), **Exhibit D** (Program Reporting-Notification-Monitoring Requirements), **Exhibit E** (Records-Additional Provisions), **Exhibit F** (Grantee Payment Checklist), **Exhibit G** (Supplemental Federal Provisions-FFATA), and **Exhibit H** (Certification Regarding Federal Lobbying).

D. Federal Funds

"Federal Funds" means the funds provided by the Federal Highway Administration ("FHWA") and the Federal Transit Administration ("FTA") to fund performance of the Work.

E. Goods

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

F. Grant

“Grant” means this Grant, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

G. Grant Funds

“Grant Funds” means available funds payable by the State to Grantee pursuant to this Grant.

H. Local Funds

“Local Funds” means the funds provided by the Grantee to fund performance of the Work.

I. Manual

“Manual” refers to the CDOT Operating Manual for MPO Transportation Planning.

J. Party or Parties

“Party” means the State or Grantee and “Parties” means both the State and Grantee.

K. Products

“Products” means the work produced as a result of the Work for this Grant.

L. Program

“Program” means the Federal Highway Administration Surface Transportation Program that provides the funding for this Grant.

M. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in §6 and Exhibit A.

N. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

O. Subgrantee

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations, which are also referred to as “consultant services”.

P. “TCSP”

“TCSP” means the Transportation, Community, and System Preservation Program.

Q. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and Exhibit A, including the performance of the Services and delivery of the Goods.

R. Work Product

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

5. TERM

A. Initial Term-Work Commencement

The Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on December 31, 2015, unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in §16, may, via an option letter, unilaterally extend the term of this Grant for a period not to exceed two months if

the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

C. Other Modifications to Term

The term may be extended beyond the period specified in Section 5A only by means of an amendment to this Grant.

6. STATEMENT OF WORK / CONTRACT OBJECTIVE PLAN

A. Completion

Grantee shall complete the Work and its other obligations as described in **Exhibit A** on or before December 31, 2015. The State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

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

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

D. Federal Laws, Rules and Regulations

If the Grant Funds involve federal funding, Grantee understands and agrees that federal laws, rules and regulations will control the Work and its implementation. Unless a written waiver is granted, Grantee agrees to comply with all required federal laws, rules and regulations applicable to the Work, in addition to all State requirements.

7. PAYMENTS TO GRANTEE

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

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is \$500,000, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit A**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Grant shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall fully pay each invoice within 15 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State. Uncontested amounts not paid by the State within 15 days may, if Grantee so requests, bear interest on the unpaid balance beginning on the 16th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that

are subject to a good faith dispute. Grantee shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

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

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other Grants, grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

v. Retroactive Payments

The State shall pay Grantee for costs or expenses incurred or performance by the Grantee prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules and regulations applicable to the Work provide for such retroactive payments to the Grantee. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in the Budget. Grantee may adjust budgeted expenditure amounts up to 10% between activities of said Budget without approval of the State. Budget adjustments to activities exceeding 10% but less than 24.99% must be submitted in advance of actual cost and receive written State approval, which approval may be transmitted informally by email or such other means that does not rise to the level of an amendment to this Grant. A budget revision of **Exhibit A** will be issued by the State with any such adjustment. Adjustments in excess of 24.99% for any activity shall be authorized by the State in an amendment to this Grant which may also require an amendment to **Exhibit A**. Budget adjustments shall not increase the State's total consideration beyond the maximum amount shown herein without an amendment to this Grant.

D. Local Funds

Grantee shall provide Local Funds as provided in **Exhibit A**. Payments to Grantee of Grant Funds will be made for Project expenditures reported by Grantee and submitted to and accepted by the State for payment based on the ratio of Federal Funds and Local Funds as shown in Exhibit A which Grantee has submitted to the State.

E. Payment Compliance

All Grant reimbursements shall comply with Title 49 Part 18 of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Additionally, Grantee shall only be reimbursed for costs allowable under 2 CFR Part 225, Appendix A.

8. REPORTING - NOTIFICATION

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

A. Performance, Progress, Personnel, and Funds

Grantee shall submit a report to the State upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in the Manual and/or **Exhibit D**.

B. Litigation Reporting

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

C. Noncompliance

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

D. Subgrants

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

Grantee is responsible for monitoring the work activities of Subgrantees.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Grant is completed or terminated, or (ii) final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Grantee shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of three years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right

to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

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

D. Final Audit Report

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

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, any State records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-101 *et seq.*

A. Confidentiality

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

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

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

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. If the Grantee receives a request for records or other information that could be considered confidential, grantee will refer the request to the state for consideration.

11. CONFLICTS OF INTEREST

Aviation shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Aviation's obligations hereunder. Aviation acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Aviation shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Aviation's obligations to the State hereunder. If a conflict or appearance exists, or if Aviation is uncertain whether a conflict or the appearance of a conflict of interest exists, Aviation shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

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

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

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

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

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

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, *et seq.*, as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each Grant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Non-Public Entities

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

B. Grantee and Subgrantees

Grantee shall require each Grant with Subgrantees, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

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

ii. General Liability

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

iii. Automobile Liability

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

iv. Additional Insured

Grantee and the State shall be named as additional insured on the Commercial General Liability Insurance policy (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of Grantee and Subgrantees shall be primary over any insurance or self-insurance program carried by Grantee or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Grantee's receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

Grantee and all Subgrantees shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant. No later than 15 days prior to the expiration date of any such coverage, Grantee and each Subgrantee shall

deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant or any subgrant, Grantee and each Subgrantee shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

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

15. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B), provided however, that the State may terminate this Grant pursuant to §15(B) without a breach. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State. All Work Product, at the

option of the State, shall be delivered by Grantee to the State and shall become the State's property.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. Grantee shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

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

i. Method and Content

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

ii. Obligations and Rights

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

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made. Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Remedies Not Involving Termination

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

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an

adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

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

iii. Deny Payment

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

iv. Removal

Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

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

16. NOTICES and REPRESENTATIVES

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

A. State:

Jeff Sudmeier
Division of Transportation Development
4201 E. Arkansas Ave.
Denver, CO 80222
Jeffrey.sudmeier@state.co.us

B. Grantee:

Tom Blickensderfer
City and County of Denver- Denver International Airport
8500 Pena Blvd.
Denver, CO, 80249
Tom.Blickensderfer@flydenver.com

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Grantee agrees to provide to FHWA and the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the federal government and State purposes. All Work Product required to be delivered to the State by Grantee shall be delivered upon completion or termination hereof.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA, CRS §24-10-101, *et seq.*, as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, *et seq.*, as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee 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 Grants and inclusion of Grant performance information in a statewide Contract Management System.

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

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

20. GRANTEE FUNDING AVAILABILITY [DENVER ONLY]

- A. Notwithstanding any other term or condition of this contract, it is expressly understood and agreed that the obligation of the Grantee for all or any part of any payment obligations set out herein, whether direct or contingent, shall only extend to payment of monies duly and lawfully

appropriated for the purpose of this contract by the City Council of the Grantee and paid into the Treasury of the Grantee. The Grantee hereby represents to the State that the local match amount designated "Local Matching Funds" in Exhibit A has been legally appropriated for the purpose of this contract by its City Council and paid into the Treasury of the Grantee. The City does not by this Grant irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant is not intended to create a multiple-fiscal year debt of the City. The Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Grantee's Revised Municipal Code.

- B.** Notwithstanding any other term or condition of this contract, this contract is made for the fiscal year of the date of final execution of this Grant (the "Contract Fiscal Year"). It is understood that funds appropriated by the Grantee for this Grant in the Grant Fiscal Year, as of the date of execution of this Grant are the only funds which will be payable by the Grantee hereunder during the Grant Fiscal Year.

21. GRANTEE, STATE NOT AGENTS OF EACH OTHER [DENVER ONLY]

It is expressly understood and agreed that the State and the Grantee shall not in any respect be deemed agents of each other, but shall be deemed to each be an independent contractor.

22. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or Subgrantees approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting arrangements and performance, which shall include monitoring the Work of Subgrantees.

B. Binding Effect

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

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

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

E. Entire Understanding

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

F. Indemnification-General

If Grantee is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Grantee, or its employees, agents, subcontractors or assignees pursuant to the terms of this

Agreement. This clause is not applicable to a Grantee that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. Jurisdiction and Venue

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

H. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

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

I. Order of Precedence

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

- i. Exhibit H** (Federal Supplemental Provisions),
- ii. Federal laws and regulations,**
- iii. Colorado Special Provisions,**
- iv. The provisions of the main body of this Grant,**
- v. Exhibit C** (Payments and Billing)
- vi. Exhibit A** (Scope of Work & Budget), and
- vii. Additional Exhibits** (in order as they appear).

J. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

K. Survival of Certain Grant Terms

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

L. Taxes

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

M. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

N. Waiver

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

O. CORA Disclosure

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

23. COLORADO SPECIAL PROVISIONS

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

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1)

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5)

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

C. GOVERNMENTAL IMMUNITY

The Grantee, by execution of this grant containing this indemnification clause, does not waive the operation of any law concerning the parties' ability to indemnify.

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

D. INDEPENDENT CONTRACTOR

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee 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 Grantee or any of its agents or employees. Unemployment insurance benefits will be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. 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 Grant, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00

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

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507

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

J. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4

[Not applicable to intergovernmental agreements]

Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, *et seq.*; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC GRANTS 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]

Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Grant and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c). Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program

procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the subgrant if a Subgrantee 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 Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 *et seq.*, the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

L. PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101

Grantee, 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 Grant.

SPs Effective 1/1/09

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24. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

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

<p align="center">GRANTEE City and County of Denver</p> <p>By: _____</p> <p>_____</p> <p align="center">Print Name of Authorized Individual</p> <p>Title: _____</p> <p>_____</p> <p align="center">Print Title of Authorized Individual</p> <p>*Signature _____</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO John W. Hickenlooper, Governor Colorado Department of Transportation Donald E. Hunt – Executive Director</p> <p>By: _____</p> <p>Signatory avers to the State Controller or delegate that, except as specified herein, Grantee has not begun performance or that a Statutory Violation waiver has been requested under Fiscal Rules</p> <p>Date: _____</p>
<p align="center">2nd Grantee Signature if Needed</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>*Signature _____</p> <p>Date: _____</p>	

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

<p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p align="center">Colorado Department of Transportation</p> <p>Date: _____</p>
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EXHIBIT A - SCOPE OF WORK AND BUDGET

Scope of Work: FHWA Contract (CDOT and DEN) – Metro Denver Aerotropolis Comprehensive Land Use and Transportation Plan

Together with its partners surrounding Denver International Airport, the City and County of Denver seeks to initiate a regional visioning and planning process for a Metro Denver Aerotropolis. This multi-jurisdictional initiative seeks to coordinate study and discussion about comprehensive land use, infrastructure and transportation/mobility plans. It will also address possible implementation and marketing strategies for the land around Denver International Airport (DIA). Denver envisions that this Aerotropolis initiative would seek to involve the full participation of the multiple jurisdictions surrounding DIA, landowners, economic development organizations, stakeholders, and all regulatory agencies asserting jurisdiction over land use, surface transportation, and functional elements of DIA, the surrounding environs and their users.

In order to help implement regional Aerotropolis planning and to coordinate it with other DIA/city planning processes, DIA and the Denver Department of Public Works sought and received funds from the Federal Highway Administration to address the land use and surface transportation issues relative to development of a Metro Denver Aerotropolis Comprehensive Land Use and Transportation Plan.

Objectives

The purpose of a Metro Denver Aerotropolis Comprehensive Land Use and Transportation Plan, to be funded through this agreement, is to develop an integrated, coordinated strategy to:

1) protect and grow the core operations of DIA; 2) optimize compatible land uses surrounding DIA; 3) initiate coordinated surface transportation planning in support of efficient and sustainable development for all land on and in proximity to DIA; and, 4) begin to develop an associated implementation, financing and marketing strategy to ensure timely and coordinated implementation of the transportation infrastructure, in support of development as it occurs.

The goals of a Metro Denver Aerotropolis Land Use and Transportation Planning process are:

- 1) To foster collaborative, regional dialog about regional land use and transportation planning that incorporates the best land use and urban standards, while complementing and enhancing the surrounding regional development;
- 2) To catalog and evaluate planned land uses within the Aerotropolis planning area (to be established) based on the current comprehensive plans of all jurisdictions within the planning area;
- 3) To integrate overall Aerotropolis planning with co-existent planning strategies in order to formulate a cohesive and complementary vision;
- 4) To establish/coordinate an overall vision/concept for development of the land surrounding DIA;
- 5) To develop a plan for supporting integrated infrastructure and mobility (including mass transit and rail) needed for efficient and sustainable development, and to develop implementation and financing plans to ensure that infrastructure can be developed concurrent with the development that it will support;

- 6) Ultimately, to generate long-term economic growth by means of: a) stimulating economic opportunity within the Aerotropolis planning area; b) improving the efficiencies and strategic use of transportation assets in the Metro Denver area; and, c) enhancing the tax base for all jurisdictions surrounding DIA;
- 7) To create a livable community, composed of high quality development that: is intelligently sited along highway and transit corridors; offers a variety of transportation choices; provides transit-oriented development adjacent to or near all transit stations; and links residential and commercial development to each other, as well as to open and recreational space.

The following parallel initiatives will influence the Aerotropolis plan:

- The Peña Boulevard Corridor Transportation Plan, a study that is intended to address non-airport traffic use of Peña Boulevard. Peña Boulevard was constructed and is maintained using DIA revenue. In accordance with FAA regulations, the airport is not permitted to pay for repair and/or expansion of Peña Boulevard necessitated by non-airport traffic use.
- The Airport City Denver Land Use and Implementation Plan, the development of land use and implementation strategies for non-aeronautical, on-airport property development. This project includes development of a land use plan and infrastructure plan, along with a financing and implementation strategy to maximize revenue production while leveraging the airport's unique position as the magnet and catalyst for regional commercial development.
- The 2040 Metro Vision Regional Transportation Plan. Undertaken by DRCOG (the Denver Regional Council of Governments), this plan will establish a direction for transportation development for the entire regional network for the next 25 years. (Ultimately the 2040 Metro Vision Plan will need to incorporate the results of the Aerotropolis and Airport City Denver planning efforts.)

In addition, the Aerotropolis Plan needs to integrate with all adjacent local jurisdiction comprehensive plans. Adams County and Commerce City have recently completed comprehensive plan updates and other jurisdictions may be initiating updates in the near future. And, the Aerotropolis Plan needs to consider an on-going DRCOG Sustainable Communities Initiative (SCI): Study for the Regional Transportation District (RTD) Commuter Rail East Corridor. This initiative is funded by a grant from the U.S. Department of Housing and Urban Development. The SCI study further enhances and helps to implement Metro Vision, the region's long-range plan for growth and development, while addressing one of the region's most pressing and exciting challenges, the leveraging of the region's multi-billion dollar implementation of the RTD FasTracks rail transit system.

Project Budget

This agreement will provide the following funds for the Metro Denver Aerotropolis Comprehensive Land Use and Transportation Plan:

Funding Source	Amount
FHWA Transportation, Community, and System Preservation (TCSP)	\$500,000
Local Matching Funds (20%)	\$125,000
TOTAL	\$625,000

The Aerotropolis initiative will seek to involve the full participation of all its partners and stakeholders surrounding DIA, including multiple jurisdictions, landowners and economic development organizations. Specific details on project deliverables and budget, including the possible participation of consultant services acquired through an RFP process, will be determined after the execution of this agreement in collaboration with these partners. Project deliverables will be generally consistent with the goals and objectives articulated in this agreement.

Background

Denver International Airport (DIA) is the nation's 5th and the world's 13th busiest airport in terms of passengers served. DEN served over 53 million total passengers in 2012. In 18 years, DIA has become the largest economic driver in the state of Colorado and the Rocky Mountain region, responsible for over \$22.5 billion in annual economic activity, with the potential of contributing \$85 billion annually upon full build out.

Surface transportation access to DIA is largely limited to a singular highway access, Peña Boulevard. Furthermore, FAA prohibits DIA from funding the operations, maintenance and capital costs required due to the steadily increasing amount of non-airport traffic on the boulevard. This condition has created a need for alternate means of surface transportation around the periphery of the Airport which can sustain the increasing vehicular traffic. To solve this issue, new arterials need to be considered.

In addition, the capacity of the existing ground surface transportation system on and surrounding DIA is experiencing the pressure of economic development which is already outpacing investment in infrastructure. And that pressure will continue to grow as the surrounding communities expand and as businesses clamor to locate near the airport for ready-access to the global marketplace.

New highway access points and improved connectivity to Interstates 70, 225, 76 and 25 as well as 270, E-470 and Denver's Northwest Parkway, are all vital to the planning framework.

The land surrounding DIA has the potential to become a bustling "Aerotropolis" that will drive job growth and elevate the entire metro area into an even greater regional economic powerhouse. The Aerotropolis -- including the I-70 and FasTracks East Line "Corridor of Opportunity" -- represents one of the most compelling investment opportunities in the world.

25. EXHIBIT B

SUPPLEMENTAL REQUIREMENTS FOR EXHIBIT A

1. Work

Per 23 CFR 420.111, Grantee shall complete the Work and other obligations as described herein and **Exhibit A**. **Exhibit A** shall consist of the activities for the Project as accepted by the Federal Highway Administration (FHWA). **Exhibit A** and **Exhibit A** shall outline the major activities to be completed with an estimated budget for each activity for each fiscal year and a timeline of estimated completion date(s), if any. Except as provided in Section 7(B)(v), Work performed prior to the Effective Date or after the termination date of this Grant shall not be considered part of the Work. Grantee will also complete and submit to CDOT, pursuant to 49 CFR § 20 and 49 CFR § 21, a Title Assurance, and a Certificate on Regarding Federal Lobbying upon execution of this Grant. If any of the aforementioned documents have previously been completed and submitted, both Parties shall ensure they have been received by CDOT and are current for the purposes of this Grant.

2. Scope Amendment

Grantee shall amend **Exhibit A** in accordance with the terms of this Grant, when:

- A. Reallocating funds between budget line items in **Exhibit A**, as permitted pursuant to §7(C); and
- B. Adding or deleting activities listed in **Exhibit A** to reflect authorized budget line item reallocations permitted pursuant to §7(C).

If any changes to **Exhibit A** (i) require an increase or decrease to the maximum amount of this Grant, (ii) change the term of the Grant, or (iii) exceed the 24.99% threshold in §7(C) for any line item, the Parties must amend this Grant prior to such change being effective.

3. Notice

Grantee shall not commence Work until the date specified by a written notice, which may be electronic, and shall complete the Work within the period specified in the Grant unless the period or terms thereof are extended according to this Grant.

4. Personnel

Grantee shall take all reasonable steps to carry out all activities described and identified in **Exhibit A**. Grantee shall be responsible to select staff/consultant services in compliance with all applicable federal procurement requirements including 23 CFR 172 and 49 CFR Part 18. Any Request for Proposal (RFP) or Request for Qualifications (RFQ) used by Grantee to secure consultant services must be reviewed by CDOT before Grantee releases the RFP or RFQ. CDOT shall have 15 calendar days from the date of receiving the RFP or RFQ in which to return comments. Responses to CDOT's comments will be provided by Grantee within 15 calendar days of receipt of the comments. Grantee shall notify CDOT in writing before executing any subgrant for consultant services

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26. EXHIBIT C

PAYMENTS AND BILLING

CDOT shall, in accordance with the provisions of this §7, pay Grantee in the amounts and using the methods set forth below:

1. Limited Availability of Funds

The amount of Federal Funds available to pay for the Work performed by Grantee in any one year is limited to the amount of the unused portion of the allocated funds, made available through 23 USC 104 (b)(3) and (f) as amended, and 49 USC 5303 as amended.

2. Additional Funds Use

TCSP Federal Funds shall be used only to reimburse Grantee for eligible allowable costs incurred and Grantee shall be solely responsible for all costs incurred that are either not allowable or which exceed the funds available in the Grant as identified herein and/or in the **Exhibit A**.

3. Invoices

A complete invoice will include the applicable items in **Exhibit F** – Grantee Payment Checklist 01/19/2011.

4. Billing, Reimbursement, and Allowable Costs

A. Allowable and Indirect Costs

Allowable and indirect costs may include but are not limited to those listed in 2 CFR 225, 2 CFR 220, 2 CFR 230, 49 CFR Part 18, or State Fiscal Rule 2-7: "Official Functions and Training Functions," whichever may apply. However, such costs shall be limited to those costs determined by the CDOT as necessary to directly carry out the Work for this Grant. In determining the amount of allowable costs, CDOT will exclude:

- i. Any costs incurred by the Grantee before the execution of the Grant or Option Letter.
- ii. Any costs incurred by the Grantee that are not included in the **Exhibit A**; and
- iii. Any cost incurred by the Grantee after the termination date of this Grant as amended.

B. Reimbursement Waiver

Grantee agrees that reimbursement of any cost under this Grant does not constitute a final CDOT decision about the allowability of the costs and does not constitute a waiver of any violation by Grantee of the terms of this Grant.

C. Certification

Upon submitting request for reimbursement, the designated representative of the Grantee has certified that:

- i. The costs are allowable, and therefore reimburseable;
- ii. The expenditure amount for that time period is correct;
- iii. The agreed upon Work has been performed and/or Work Product has been produced;
- iv. All Requests for Proposals have been forwarded to CDOT for review and comment;
- v. Reimbursements are being requested in accordance with the terms of this Grant; and
- vi. Copies of recorded times of employees (where applicable) are correct; including in-kind and volunteer services.

D. Documentation

The Grantee shall include documentation of expenses of Federal Funds for TCSP Work. Such information shall include but not be limited to the items listed in this Exhibit and **Exhibit F** of this Grant as proof of documentation. For purposes of this Grant, a copy of each required invoice shall be forwarded to the Division of Transportation Development-Business Office, along with a notice to the Program Manager that the invoice has been sent to the Division of Transportation Development-Business Office c/o Business Manager at:

4201 E. Arkansas Ave., Shumate Building, Denver, CO 80222

E. Reimbursement Method and Time

Grantee shall request reimbursement from CDOT for the eligible allowable cost of TCSP funds for eligible Work, and other costs as described in section 8 of this Grant, incurred during the grant fiscal year within the limits of this Grant in compliance with federal and State law and other applicable

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regulations. Reimbursement requests shall be submitted by the Grantee to CDOT monthly, or quarterly, and will be reimbursed based on the ratio between Local Funds and Federal Funds in Section A of this **Exhibit C**, which shall not exceed the totals in Section **§7(A)** of this Grant.

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27. EXHIBIT D

PROGRAM MONITORING – NOTIFICATION – MONITORING REQUIREMENTS

Reports, evaluations, and reviews required under Sections 8 and 9 and this Exhibit, shall be in accordance with the procedures as prescribed by the TCSP guidance and the State.

1. Overall Monitoring

Activities described in **Exhibit A** for this Grant shall be monitored by CDOT in accordance with the provisions of 23 CFR Part 420.117 and Part 450 and any amendments and this Grant. The provisions of this Paragraph do not constitute a waiver of legal and administrative appeals available to the Grantee or CDOT.

2. Report Contents

CDOT will monitor all the activities of the Grantee supported by transportation planning funds to assure that the Work is being performed consistent with 23 CFR Part 420.117, 49 CFR Part 18 and Part 19 and supporting federal regulations to enable the submission of appropriate reports that will contain at a minimum:

- A. Comparison of actual performance with established goals;
- B. Progress in meeting schedules;
- C. Comparison of budgeted (approved) amounts and actual costs incurred;
- D. Cost variances to budget;
- E. Approved planning program revisions; and
- F. Other pertinent supporting data.

3. Performance, Progress, Personnel, and Funds

In responding to these requirements, CDOT will utilize the following steps and procedures to ensure that assigned responsibilities are carried out:

A. Monitoring Documents

CDOT will use the **Exhibit A** submitted for the purposes of this Grant in reviewing the progress being made by the Grantee, to meet the commitments in this Grant. The issue of reasonable costs will be discussed with the Grantee prior to Grant execution. **Exhibit A** shall include all activities, deliverables, and budgets committed to by the Grantee, including but not limited to:

- i. Out-of-State Travel: The total MPO out-of-state travel budget is to be identified in the **Exhibit A**. An up to date MPO Out-of-State Travel Plan is to be available for review.
- ii. Equipment Purchases: Any expected equipment purchases over \$5,000 are to be itemized by estimated cost and equipment description in the **Exhibit A**. The MPO must request CDOT pre-approval of any plans for equipment purchases (over \$5,000) that are not included in the **Exhibit A**.
- iii. Contractual Services: Subgrants are to be identified in the **Exhibit A**.
- iv. Activity Descriptions: Major Scope of Work activity descriptions with estimated budgets are to be included in **Exhibit A**. Subactivity descriptions are to be included in the **Exhibit A**. Estimated subactivity budgets in dollars or percent are to be included in the **Exhibit A**.

B. Monitoring Meetings

Meetings between CDOT and Grantee representatives will be conducted annually for the purpose of reviewing progress, resource allocations, and billings. At CDOT's discretion, subsequent meetings may be held. Grantee representatives will provide an expenditure summary to CDOT at least one week prior to the meeting. The time and location of such meetings will be mutually agreed upon by both Parties.

C. Progress and Financial Reports

CDOT will submit progress and financial reports to the appropriate federal agencies.

4. Annual/Accomplishment Reports

Within 60 days after the end of the federal fiscal year, the Grantee will provide to CDOT an annual report and a final accomplishment report of the activities performed under this Grant for the completed fiscal year. Upon completion of the Work the Grantee will provide a final accomplishment report to CDOT. The reports shall be done in accordance with 49 CFR 18.40, and include, but not be limited to:

- A. Accomplishments by activities;

- B. Status of uncompleted Products; and
- C. Actual expenditures for the reporting program period.

5. Planning Agency Responsibility

Grantee is responsible for the timely production of all Products, which it has committed to in the **Exhibit**

A. The Products are considered acceptable if developed and/or approved in accordance with the local MPO process. **Exhibit A** will be reviewed and/or approved by state and federal agencies, as defined in 23 CFR Part 420.

6. Noncompliance

If any Product the Grantee has committed to in the Exhibit A is not produced and justification was not provided, and having been determined by CDOT, the Grantee has materially failed to comply with the terms and conditions of this Grant, the following steps, in accordance with 49 CFR 18.43, will be implemented by CDOT:

- A. CDOT representative will meet with the Grantee representative to discuss performance.
- B. The CDOT representative will report the progress to the Division of Transportation Development Director.
- C. The Director will issue a decision as to whether performance is satisfactory or unsatisfactory. If performance was determined to have been unsatisfactory, CDOT shall determine if a reduction in allocation is appropriate. The Grantee will be notified of any decisions made by CDOT.

7. Additional Requirements for Rights in Data, Documents, and Computer Software

Whenever possible, published material shall acknowledge the financial participation of CDOT, FHWA, FTA and other agencies contributing funding to the Work Product. Any published material acknowledging the contribution of the FHWA and/or FTA shall include the federal disclaimer statement: "FUNDED BY THE FHWA and/or FTA". Published materials include any non-internal documents, reports, maps, photographs, computer software, or like materials that are intended to be viewed by those outside of CDOT, and Grantee.

Patents: In addition to the standard patent rights clauses of 37 CFR §401 et. al, and other applicable laws and regulations, CDOT, Grantee, and either party's subrecipients are subject to the provisions of 37 CFR part 401, governing patents and inventions whereby "The subgrantee or Grantee will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the Subgrantee's or Grantee 's subject inventions."

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28. EXHIBIT E

RECORDS (Additional Provisions)

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

1. Maintenance

Grantee and any Subgrantees shall maintain all books, records, and other documentation pertaining to authorized Work and to completely substantiate all costs incurred and billed to CDOT during the Grant term and for a period of three (3) years from the date of closure under the terms as listed in §9 of this Grant. These records shall be made available for inspection and audit to CDOT, FHWA, FTA or the Comptroller General of the United States, and copies thereof shall be furnished, if requested. Grantee shall include this record keeping/audit requirement in any Subgrant with any Subgrantee employed to perform Work by expressly requiring the Subgrantee to comply with this requirement.

2. Inspection of Grantee

In accordance with Section 9, the State and FHWA are specifically authorized to review and inspect at all reasonable times all such records and all technical and financial aspects of the Work. FHWA will arrange such review and inspections through CDOT. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension period.

3. A-133

In accordance with the provisions of OMB Circular No. A-133: "Audits of States, Local Governments, and Nonprofit Organizations", all nonfederal entities including state and local government and non-profit organizations, receiving more than \$500,000 from all federal financial assistance funding sources, shall comply with the audit requirements of A-133 (see also, 49 CFR 18.26). Compliance with A-133 is required in the following manner:

- A. If the Subgrantee expends less than \$500,000 in federal funds (all federal sources, not just highway funds) in its fiscal year then this requirement does not apply.
- B. If the Subgrantee expends more than \$500,000 in federal funds, but only received federal highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.
- C. If the Subgrantee expends more than \$500,000 in federal funds, and the federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.
- D. Single Audit can only be conducted by an independent auditor in accordance with generally accepted government auditing standards covering financial audits (49 CFR 18.26). An audit is an allowable direct or indirect cost.
- E. An audit is an allowable direct or indirect cost.

4. Final Audit Report

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

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29. EXHIBIT F

Grantee Payment Checklist 01/19/2011

This checklist is to assist the Grantee in preparation of its billing packets to CDOT. This checklist is provided as guidance and is subject to change. All items may not apply to your particular entity. CDOT's goal is to reimburse Grantees as quickly as possible and a well organized and complete billing packet helps to expedite payment.

- **Information to be included on the Invoice from the Grantee**
 - > PO Number
 - > WBS
 - > Section/Program Number
 - > Name
 - > Address
 - > Phone Number
 - > Invoice Number
 - > Billing Period
 - > Total Amount of Grant, Previous Grant Balance, Total Eligible Expenses, Federal Share, Local Fund, New Grant Balance and Total Amount to be Reimbursed to Agency
 - > Signature of Grantee Financial Representative
- **Copies of invoices from the Grantee Subgrantees (tier I and some tier IIs)**
 - > Include a copy of the specific document the Subgrantee used to invoice the Grantee. The Grantee is responsible for ensuring that the backup matches the invoice and is eligible for reimbursement.
 - > The CDOT grant manager will review and determine if the Grantee expenses are eligible for reimbursement.
 - > If the Grantee pays the Subgrantee a discounted amount, the full amount cannot be reimbursed to the Grantee. The Grantee will only be reimbursed up to the actual amount paid to the Grantee's Subgrantee.
 - > Please ensure that all payment vouchers include some notation of when it was paid or approved for payment.
 - > Invoice(s) should match the check amount. An additional explanation and documentation is required for any variances.
 - > Estimates, statements and emails are not acceptable in lieu of an invoice copy.
- **Copies of checks (All tiers)**
 - > All of the following are acceptable - copies of checks, check registers, approved accounting system generated expenditure ledgers showing the amount paid, the check number or electronic funds transfer (EFT) and the date paid.
 - > CDOT needs to ensure that expenditures incurred by the Grantee have been paid by the Grantee before CDOT is invoiced by the Grantee.
- **Expenditure ledger (All tiers)**
 - > An expenditure ledger needs to be submitted from the Grantee's financial accounting system. The report should display the accounting system information, date of the report, accounting period, current period transactions, and the account coding for all incurred expenditures. Excel spreadsheets are not approved expenditure reports. However, an additional excel spreadsheet may be required in order to explain any variances between the expenditure and the amount eligible for reimbursement.
 - > CFR 49 part 18 Section 18.20 Standards for Financial Management Systems requires the Grantee to have approved accounting systems so this should not be difficult to generate by cost center specific to the reimbursable project. The expenditure report is a good summary page if there is substantial documentation.

- > If the Grantee has copies of the invoice(s) and check(s), you do not need the expenditure ledger also, but the invoices must be marked as approved for payment.
- **Timesheets (tier I and some tier IIs)**
 - > Timesheets should show a breakdown of all hours and all projects worked for the day, week, month or time collection period. The timesheet must also be signed or approved either in ink or electronically. If an electronic approval occurs, the supervisors' signature will be required on the electronic time report submitted for reimbursement.
 - > Backup documentation for payroll expenses includes the time sheet, an hourly or salary rate and a payroll ledger indicating total hours, wages, and benefits. If there is sensitive information such as social security numbers or addresses, please block or delete that information prior to submitting it.
- **In kind match – If a Grantee wishes to use in-kind match, it must be approved by CDOT prior to any work taking place. (All tiers)**
 - > If an in kind match is being used for the local funds the in-kind portion of the project must be included in the project application and scope of work attached to the Grant or purchase order. FTA does not require pre-approval of in-kind, but FHWA and CDOT does.
 - > Documentation such as an invoice copy, time sheet, etc. is still required for all in-kind transactions. The documentation varies depending on the source of the in-kind.
 - > Expenditure ledger from the Grantee must also show the in kind match in their general ledger.
 - > If the Grantee is using in kind match, they also need to attach a drawdown schedule indicating how much in-kind match was received, the date they received it, how much has been applied to the current invoice and how much has been carried forward. The carry forward balance for in-kind expires when the Grant term expires.
 - > Full documentation will be required on the use of in-kind match, regardless of the tier held by the Grantee.
- **Indirect costs- If a Grantee wishes to use indirect costs, the rate must be approved by CDOT or other cognizant State Agency prior to applying it to the reimbursements (All tiers)**

If indirect costs are being requested, please submit an approved indirect letter provided by either CDOT or another State of Colorado agency. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

30. EXHIBIT G

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

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

- 1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. “Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
 - 1.1.1.** Grants;
 - 1.1.2.** Contracts;
 - 1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
 - 1.1.4.** Loans;
 - 1.1.5.** Loan Guarantees;
 - 1.1.6.** Subsidies;
 - 1.1.7.** Insurance;
 - 1.1.8.** Food commodities;
 - 1.1.9.** Direct appropriations;
 - 1.1.10.** Assessed and voluntary contributions; and
 - 1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.
 - Award *does not* include:**
 - 1.1.12.** Technical assistance, which provides services in lieu of money;
 - 1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 1.1.14.** Any award classified for security purposes; or
 - 1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
- 1.2. “Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
- 1.3. “Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
- 1.4. “Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity.

Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.

- 1.5. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;
- 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.5.2. A foreign public entity;
 - 1.5.3. A domestic or foreign non-profit organization;
 - 1.5.4. A domestic or foreign for-profit organization; and
 - 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **"Executive"** means an officer, managing partner or any other employee in a management position.
- 1.7. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."
- 1.9. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.
- 1.12. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.
- 1.13. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **"System for Award Management (SAM)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life,

health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

1.15.4. Change in present value of defined benefit and actuarial pension plans;

1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

1.16. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

1.17 "Vendor" means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. Compliance. Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.

3.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

3.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

4. Total Compensation. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and

4.2. In the preceding fiscal year, Contractor received:

4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.
 - 7.1 **ToSAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:
 - 7.1.1 Subrecipient DUNS Number;
 - 7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
 - 7.1.3 Subrecipient Parent DUNS Number;
 - 7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
 - 7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
 - 7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.
 - 7.2 **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:
 - 7.2.1 Subrecipient's DUNS Number as registered in SAM.
 - 7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
 - 8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.
 - 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
 - 8.4** There are no Transparency Act reporting requirements for Vendors.
- 9. Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

31. EXHIBIT H

CERTIFICATE REGARDING FEDERAL LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, sub grants, and contracts under grant, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

Grantee: City & County of Denver

By: _____

Title: _____

*Signature

Date: _____