

State of Colorado Grant Agreement

Cover Page

State Enterprise

Nonattainment Area Air Pollution Mitigation
Enterprise (NAAPME)

Agreement Number

26-HTD-XC-00117

Local Agency

CITY & COUNTY OF DENVER

Agreement Performance Beginning Date

The Effective Date of this Agreement

Project # NAP SW03-846 (27217)

Agreement Maximum Amount \$1,000,000.00

Agreement Expiration Date

March 24, 2031

Agreement Authority -

Authority to enter into this Agreement exists in CRS §§43-4-1301, 43-4-1302, and 43-4-1303.

Agreement Purpose

The purpose of this Grant Agreement is to provide funding for eligible projects that reduce traffic, including demand management projects that encourage alternatives to driving alone or that directly reduce air pollution.

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Agreement:

1. Exhibit A, Statement of Work.
2. Exhibit B, Sample Option Letter.
3. Exhibit C, Funding Provisions.
4. Exhibit D, PII Certification

In the event of a conflict of inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions in **§16** of the main body of this Agreement.
2. The provisions of the other sections of the main body of this Agreement.
3. Exhibit A, Statement of Work.
4. Exhibit D, PII Certification
5. Exhibit B, Sample Option Letter.
6. Exhibit C, Funding Provisions.

Principal Representatives

For the State:

Lexi Agesen
Nonattainment Area Air Pollution Mitigation Enterprise (NAAPME)
2829 W. Howard Place
Denver, CO 80204
cdot_nonattainmententerprise@state.co.us

For Local Agency:

Jane Canada

201 W Colfax Ave
Denver, CO 80202
Jane.Canada@denvergov.org

Signature Page

The Parties hereto have executed this agreement

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

Local Agency
[Insert Legal Name of Local Agency]

2nd Local Agency Signature if Needed

Refer to local agency signature page

By: [Name & Title of Person Signing for Local Agency] By: [Name & Title of Person Signing for Local Agency]

Date: _____

Date: _____

STATE OF COLORADO

Jared S. Polis, Governor
Nonattainment Area Air Pollution Mitigation Enterprise (NAAPME)
Darius Pakbaz, Director

Darius Pakbaz, Director NAAPME

Date: _____

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: Nonattainment Area Air Pollution Mitigation Enterprise (NAAPME)

Effective Date: _____

Contract Control Number:

DOTI-202684158-00

Contractor Name:

Colorado Department of Transportation

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

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Parties

This Agreement is entered into by and between Grantee named on the Cover Page for this Agreement (the “Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Local Agency and the State agree to the terms and conditions in this Agreement.

1. Term and Effective Date

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Signature and Cover Page for this

Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date, except as described in **§4.D**, 2) before execution of an Encumbering Document for the respective phase and the official Notice to Proceed for the respective phase or 3) after the Fund Expenditure End Date. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

B. Initial Term

The Parties' respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of five (5) years or less at the same rates and under the same terms specified in this Agreement (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Local Agency in a form substantially equivalent to Sample Option Letter attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Local Agency as provided in **§13**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed five (5) years (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§12.A.i**.

i. Method and Content

The State shall notify Local Agency of such termination in accordance with **§13**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to the rights and obligations set forth in **§11.A.i.a**.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder.

F. Local Agency's Termination Under Federal Requirements if applicable

Local Agency may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

2. Definitions

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Local Agency is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.

- C. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1), C.R.S.
- D. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, et seq., C.R.S.
- E. **“Cost Sharing”** means a portion of project costs not paid under this Subaward. This includes match which refers to required levels of cost share that must be provided (2 CFR 200.306).
- F. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature for this Agreement.
- G. **“Encumbering Document”** means a document that authorizes a formal obligation of funds, typically done through an “Option Letter” as set forth in §4.E.
- H. **“End of Term Extension”** means the time period defined in §1.D.
- I. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- J. **“Extension Term”** means the time period defined in §1.C.
- K. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.
- L. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- M. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, et seq. C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- N. **“Initial Term”** means the time period defined in §1.B.
- O. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- P. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.

- Q. **“Recipient”** means the State agency shown on the Signature and Cover Page of this Agreement, for the purposes of this Federal and/or State Award.
- R. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- S. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Local Agency which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Local Agency without restrictions at the time of its disclosure to Local Agency; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Local Agency to the State; (iv) is disclosed to Local Agency, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- T. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- U. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- V. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- W. **“Subcontractor”** means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- X. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to the Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal award specifically indicate otherwise.
- Y. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- Z. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

3. Statement of Work

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**. The State shall have no liability to compensate Local Agency for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

A. Maintenance Obligations

Local Agency shall maintain, repair, replace, and perform the Work constructed under this Agreement at its own cost and expense during the Work's useful life, in a manner satisfactory to the State and FHWA. If the Work is on a State Highway, Local Agency is responsible for all maintenance, repairs and/or replacement in accordance with the Division of Authority pursuant to C.R.S. §43-2-135. Local Agency shall make proper provisions for such maintenance, repair, and replacement obligations each year. Local Agency shall conduct such maintenance, repair, replacement, and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining, repairing, and replacing such improvements. The State and FHWA may make periodic inspections to verify that such Work are being adequately maintained.

B. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully in the monitoring activities described in **§6.C**.

4. Payments to Local Agency

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum shown on the Cover Page of this Agreement.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with the funding provisions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement.

ii. Interest

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

iii. Payment Disputes

If Local Agency disputes any calculation, determination or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§1.E**.

C. Matching Funds

Local Agency shall provide Matching Funds as provided in **§4.A and Exhibit C**. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury or bank account. Local Agency represents to the State

that the amount designated “Local Agency’s Matching Funds” in **Exhibit C** has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Local Agency’s laws or policies.

D. Reimbursement of Local Agency Costs

Only with prior written approval, the State shall reimburse Local Agency’s allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **\$4.A** for all allowable costs described in this Grant and shown in the Funding Provisions, except that Local Agency may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Local Agency provides notice to the State of the change, the change does not modify the total maximum amount of this Agreement or the maximum amount, and the change does not modify any requirements of the Work. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed. Local Agency’s costs for Work performed after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- ii. Equal to the actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Grant Funds Budget by State Option Letter

The State may, at its sole discretion, issue an “Option Letter” to Local Agency to add or modify Work phases in the Work schedule in Exhibit C if such modifications do not increase total budgeted Grant Funds. Such Option Letters shall amend and update Exhibit C, Sections 1, 2 and/or 4 of the Table, and sub-sections B and C of Exhibit C. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. This Option Letter is NOT a Notice to Proceed. Modification of Exhibit C by unilateral Option Letter is permitted only in the specific scenarios listed below in §4.E.i, ii, iii, and iv. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to Exhibit B. Such Option Letters will be incorporated into this Agreement.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals and/or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this

Agreement and must decrease the amount budgeted and encumbered for one (1) or more other Work phases so that the total amount of budgeted Grant Funds remains the same. The State may also change the funding sources if the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue an Option Letter to increase and/or decrease the total encumbrance amount of one (1) or more existing Work phases, Right of Way Acquisition/Relocation, or Railroads, as long as the total amount of budgeted Grant Funds remains the same, replacing the original Agreement Funding **Exhibit C** with an amended **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). This must be done within 120 days of changing the encumbrance amount.

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Grant Funds from one (1) Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, Federal, and local match funding. In such case, the original funding exhibit (**Exhibit C** will be replaced with an amended **Exhibit C-1** with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Grant Funds transferred from one (1) Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Grant Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A** and encumber and transfer Grant Funds from one (1) Work phase to another. The original funding (**Exhibit C** in the original Agreement will be replaced with an amended **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Grant Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Grant Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term. The State, at its sole discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any amended version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1**

(with subsequent exhibits labeled **C-2**, **C-3**, etc.). To exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Close-Out

Local Agency shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement. To complete close-out, Local Agency shall submit to the State all deliverables (including documentation) as defined in this Agreement and Local Agency's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement due to Local Agency's failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

5. Reporting - Notification

A. Quarterly Reports

In addition to any reports required pursuant to the Grant terms or pursuant to any other Exhibit, for any Agreement having a term longer than three (3) months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five (5) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within ten days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Local Agency's performance and the final status of Local Agency's obligations hereunder.

D. Violations Reporting

Local Agency shall disclose, in a timely manner, in writing to the State, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. The State

may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

6. Local Agency Records

A. Maintenance

Local Agency 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. Local Agency shall maintain such records for a period (the "Record Retention Period") of three (3) years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State. A cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Local Agency shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Local Agency Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by that governmental entity. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work.

D. Final Audit Report

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

7. Confidential Information - State Records

A. Confidentiality

Local Agency shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Local Agency shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's Principal Representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local

Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Local Agency shall make all modifications as directed by the State. If Local Agency cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Local Agency shall reimburse the State for the reasonable costs thereof.

E. Safeguarding PII

If Local Agency or any of its Subcontractors will or may receive PII under this Agreement, Local Agency shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Local Agency, including, but not limited to, Local Agency's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Local Agency is given direct access to any State databases containing PII, Local Agency shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit D** on an annual basis Local Agency's duty and obligation to certify as set forth in **Exhibit D** shall continue as long as Local Agency has direct access to any State databases containing PII. If Local Agency uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Local Agency shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

8. Conflict of Interest

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Local

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

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

D. Local Agency acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Local Agency further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Agreement.

9. Insurance

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

C. Automobile Liability

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

D. Cyber/Network Security and Privacy Liability

Liability insurance covering civil, regulatory, and statutory damages, contractual damages, data breach management exposure, and any loss of income or extra expense as a result of actual or alleged

breach, violation, or infringement of right to privacy, consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

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

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

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

F. Crime Insurance

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

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

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors.

H. Primacy of Coverage

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

I. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §13 within seven days of Local Agency's receipt of such notice.

J. Subrogation Waiver

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

K. Public Entities

If Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §§24-10-101, et seq., C.R.S. (the "GIA"), Local Agency shall maintain, in lieu of the liability insurance

requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Local Agency shall ensure that the Subcontractor maintain at all times during the terms of this Local Agency, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

10. Breach of Agreement

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §11 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Local Agency is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

11. Remedies

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §10, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not cancelled by the termination notice and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §1.E.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Local Agency shall, as approved by the State (i) secure that right to use such Work for the State and Local Agency; (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

f. Collection of Unallowable Costs (2CFR 200.410)

Payments made for costs determined to be unallowable by either the awarding Federal or State agency, cognizant agency for indirect costs, or pass-through entity must be refunded with interest. Unless directed by Federal ☐ and/or State statute or regulation, repayments must be made in accordance with the instructions provided by the Awarding agency or pass-through entity that made the allowability determination. See §§ 200.300 through 200.309, and §200.346.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in **§10** and the dispute resolution process in **§12** shall have all remedies available at law and equity.

12. Dispute Resolution

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Question of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the CDOT. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or their duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

13. Notices and Representatives

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this

Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

14. Rights in Work Product and Other Information

A. Work Product

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

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

iii. Assignments and Assistance

Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

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

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

15. General Provisions

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Captions and References

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

C. Entire Understanding

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

D. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

E. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

F. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

G. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

H. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party. Specifically, but not limited to **§3** Maintenance Obligations.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §15.A, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial

exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Compliance with State Law and Regulations

Local Agency shall comply with all State law, regulations, State Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Grant.

L. Accessibility

- i. Local Agency shall comply with the *Accessibility Standards for Individuals with a Disability*, as adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S.
- ii. The State may require Local Agency's compliance with the *Accessibility Standards for Individuals with a Disability* adopted by the Office of Information Technology pursuant to §24-85-103 C.R.S. is determined and tested by a qualified third party selected by the State. The State may ask the Local Agency to review the selection of the third party. Local Agency shall be responsible for all costs associated with the third-party vendor's assessment. If Local Agency is not in compliance as determined by the third-party vendor, at the State's request and at the State's direction, Local Agency shall promptly take all necessary actions to come into compliance using a State-approved vendor, at no additional cost to the State.

16. Colorado Special Provisions (Colorado Fiscal Rule 3-3)

These Special Provisions apply to all agreements. Contract refers to Agreement.

A. **Statutory Approvals. §24-30-202(1), C.R.S.**

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(19), C.R.S., then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. **Fund Availability. §24-30-202(5.5), C.R.S., applicable Local Agency law, rule or regulation**

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

C. **Governmental Immunity.**

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. Independent Contractor.

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

E. Compliance with Law.

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

F. Choice of Law, Jurisdiction, and Venue.

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

G. Prohibited Terms.

Any term included in this Agreement that requires the State to indemnify or hold Local Agency harmless; requires the State to agree to binding arbitration; limits Local Agency's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S. Any term included in this Contract that limits Local Agency's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. Software Piracy Provisions.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Local Agency hereby certifies and warrants that, during the term of this

Agreement and any extensions, Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Local Agency is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. Employee Financial Interest/Conflict of Interest §§24-18-201 and 24-50-507, C.R.S.

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

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EXHIBIT A
SCOPE OF WORK

Name of Project: Denver First & Last Mile
Project Number: NAP SW03-846
Subaccount #: 27217

The City and County of Denver will design the First and Last Mile Improvements (hereinafter referred to as “this work”). The Non-Attainment Area Air Pollution Mitigation Enterprise (“NAAPME”) and the City and County of Denver believe it will be beneficial to perform this work to improve first and last mile access to the Federal BRT along east-west corridors by upgrading bike, pedestrian, and bus facilities to create a safer, more comprehensive multimodal transportation system.

The Design phase of the work is expected to begin in summer 2026 and will identify more exact requirements, qualities, and attributes for this work (hereinafter referred to as “the exact work”). The exact work shall be used to complete the Construction phase of the project. The Construction phase of the contract is anticipated to begin in spring 2027.

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

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EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code		Original Agreement #

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Keith Stefanik, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

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

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C - FUNDING PROVISIONS**City and County of Denver & Project # NAP SW03-846 (27217)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost of the Work to be \$1,000,000.00, which is to be funded as follows:

1. a.	State Funds (80% of NAAPME Award)		\$800,000.00
b.	Local Agency Funds (20% of NAAPME Award)		\$200,000.00
TOTAL BUDGETED FUNDS			\$1,000,000.00
2.	ESTIMATED PAYMENT TO LOCAL AGENCY		
a.	State Funds Budgeted		\$800,000.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY		80%	\$800,000.00
TOTAL ESTIMATED FUNDING BY LOCAL AGENCY		20%	\$200,000.00
TOTAL PROJECT ESTIMATED FUNDING		100.00%	\$1,000,000.00
4.	FOR STATE ENCUMBRANCE PURPOSES		
a.	Total Encumbrance Amount (Only State funds are encumbered)		\$800,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109		\$0.00
NET TO BE ENCUMBERED BY STATE IS AS FOLLOWS			\$800,000.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

Design 3020		
WBS Element 27217.10.30	Performance Period Start*/End Date	\$0.00
	N/A	

*The Local Agency should not begin work until both of the following are in place: 1) the execution of the document encumbering funds for the respective phase; and 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these two (2) milestones are achieved will not be reimbursable.

B. Funding Ratio

The funding ratio for the State funds for this Work is 80% State funds to 20% Local Agency funds, and this ratio applies only to the \$1,000,000.00 that is eligible for State funds. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$1,000,000.00, and additional State funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$1,000,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

This applies to the entire scope of Work.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$800,000.00. For State accounting purposes, the State funds of \$800,000.00 will be encumbered, but the Local Agency funds of \$200,000.00 will NOT be encumbered. The total budget of this project is \$1,000,000.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and any cost is subject to revisions agreed to by the parties prior to bid and award. **This applies to the entire scope of Work.**

Exhibit D
PII Certification
STATE OF COLORADO

**THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII
THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: _____

Printed Name: _____

Date: _____

STATE OF COLORADO

**THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS
TO PII THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of entity / organization) (the “Organization”), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: _____

Printed Name: _____

Title: _____

Date: _____