Project: (FSA M320-106) (21363)
Region: 1 (JH) (**FASTER Grant Construction)**

STATE OF COLORADO
Colorado Department of Transportation
FASTER Safety Grant
with
City and County of Denver

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1. PARTIES

This Grant ("Grant") is entered into by and between CITY AND COUNTY OF DENVER, 201 West Colfax Avenue, Denver, CO 80202, CDOT Vendor # 0002000018 ("Local Agency" or "Grantee"), and the STATE OF COLORADO acting by and through the Colorado Department of Transportation, Division of Transit and Rail ("State" or "CDOT"). Local Agency 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 (hereinafter called the "Effective Date"). 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, 43-2-101(4)(c) as amended and funds have been budgeted, appropriated and otherwise made available pursuant to CRS §43-4-811(2) 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

The purpose of this Grant is for CDOT to disperse FASTER Transit Program Funds to Grantee to conduct work within the provisions of this Grant. The work to be completed under this Grant by the Grantee is more specifically described in **Exhibit A** and **Exhibit C**.

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 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, §19,** and all **Exhibits**.

C. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (FASTER Program Requirements), **Exhibit C** (Funding Provisions), **Exhibit D** (Grantee Payment Checklist), **Exhibit E** (49 CFR 18 Subpart C), **Exhibit F** (General Procurement Standards), **Exhibit G** (State and Grantee Commitments), **Exhibit H** (Option Letter), **Exhibit I** (Security Grant), **Exhibit J** (State or Federal-Aid Project Agreements with Professional Subgrantee Services) and **Exhibit K** (Grantee Contract Administration Checklist).

D. Goods

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

E. 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 grants, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

F. Grant Funds

"Grant Funds" means the total of State dollars and Local match dollars, as shown in **Exhibit C** and payable by the State to Grantee pursuant to this Grant.

G. Local Funds

"Local Funds" means funds provided by any city, county or entity (public or private) for performance of the Work, as required by the State to match the State FASTER funds pursuant to this Grant.

H. Manual

"Manual" refers to CDOT's "Local Agency Manual", if applicable.

I. Party or Parties
"Party" means the State or Grantee and "Parties" means both the State and Grantee.

J. Project
"Project" means Work identified in **Exhibit A.**

K. Program
"Program" means the Funding Advancement for Surface Transportation and Economic Recovery (FASTER) Senate Bill 09-108 grant program that provides the funding for this Grant.

L. Review
"Review" means examining Grantee's Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6, §19** and **Exhibit A**.

M. Services
"Services" means the required services to be performed by Grantee pursuant to this Grant.

N. State Funds
"State Funds" means funds provided by the State for performance of the Work.

O. Subgrantee
"Subgrantee" means third-parties, if any, engaged by Grantee to aid in performance of its obligations.

P. 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.

Q. 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 AND EARLY TERMINATION

A. Initial Term-Work Commencement
The Parties respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate five (5) years from the date of the state controller's signature in section 23 unless sooner terminated or completed as demonstrated by final payment and final audit.

B. Notice to Proceed
Grantee shall not commence performance of the Work until the date specified by a written notice to proceed, which may be sent by email or by hardcopy pursuit to **§17**.

6. SCOPE OF WORK

A. Completion
Grantee shall complete the Work and its other obligations as described herein and in **Exhibit A** (Scope of Work). Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

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 involves 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. OPTION LETTER MODIFICATION

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

A. Option to begin a phase and/or increase or decrease the encumbrance amount.

The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds as shown in **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit **(Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit H**. If the State exercises this option, the Agreement will be considered to include this option provision.

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

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

C. Option to do both Options A and B.

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

8. PAYMENTS

The State shall, in accordance with the provisions of this **§8**, pay Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable to the Local Agency under this Grant shall be $3,201,000.00 (for CDOT accounting purposes, only State FASTER Transit funds of $3,201,000.00 will be encumbered) unless such amount is increased by an appropriate written modification to this Grant executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Grant, and that such cost is subject to revisions (in accordance with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Grant or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. The Local Agency 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 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute.

The Local Agency 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, the Local Agency's compensation beyond the State's current fiscal year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal 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 terminate this Grant immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Grant or other grants or agreements between the State and the Local Agency 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.

C. Use of Funds

i. State FASTER Funds

State FASTER Funds shall be used only for eligible costs identified herein and/or in the Budget. Budget line item adjustments 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 C** will be issued by State with such adjustment. Adjustments in excess of 24.99% for any line item shall be authorized by the State in an amendment to this Grant. The State's total consideration shall not exceed the maximum amount shown herein.

ii. Matching Funds

The matching ratio for the funds for this Work is 100% State FASTER funds to 0% Required Local Agency funds, it being understood that such ratio applies to the $3,201,000.00.

The Local Agency shall provide matching funds as provided in **Exhibit C**. The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The 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 Grant by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Grant by its authorized representatives and paid into its treasury. The Local Agency 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 Local Agency. The 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 the Local Agency's laws or policies.

D. Local Funds

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimubursement hereunder, and the Local Agency shall comply with all

such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Grant and **Exhibit C**. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary
Resonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost
Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred).

9. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **§9** shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with **§22**, if applicable.

A. Performance, Progress, Personnel, and Funds
State shall submit a report to the Grantee 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 Local Agency Manual and/or this Grant.

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. Performance Outside the State of Colorado and/or the United States
[Not applicable if Grant Funds include any federal funds] Following the Effective Date, Grantee shall provide written notice to the State, in accordance with **§17 (Notices and Representatives)**, within 20 days of the earlier to occur of Grantee's decision to perform, or its execution of an agreement with a Subgrantee to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this **§9.C** shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Grantee to provide notice to the State under this **§9.C** shall constitute a material breach of this Grant.

D. Noncompliance
Grantee's failure to provide reports and notify the State in a timely manner in accordance with this **§9** may result in the delay of payment of funds and/or termination as provided under this Grant.

E. 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.

10. LOCAL AGENCY 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 (the Record Retention Period) for a period of three years following the date of submission to the State of the final expenditure report, or if this Grant 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 the Grant 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 or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

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.

11. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this **§11** 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. To the extent permitted by law, 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 Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this **§11.**

12. CONFLICT OF INTEREST

Subrecipient shall not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Subrecipient's obligations hereunder. Such a conflict of interest would arise when a Subrecipient's employee, officer or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or receives a tangible personal benefit from Subrecipient's receipt of the Federal Award and/or entry into this Grant Agreement. Officers, employees and agents of the Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Subrecipient acknowledges that with respect to this Grant Agreement, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations to the State hereunder. If a conflict or the appearance of a conflict exists, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict of interest exists, Subrecipient 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 Agreement.

13. 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.

14. 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 **§14(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 Subgrantees, 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. Professional Liability

Professional liability insurance with minimum limits of liability of not less than $1,000,000 each claim and $1,000,000 annual aggregate for both the Grantee or any Subgrantee when:

a) Contract items 625 (Construction Surveying), 629 (Survey Monumentation), or both are included in the Grant

b) Plans, specifications, and submittals are required to be signed and sealed by the Grantee's or Subgrantee's professional engineer, including but not limited to:

(1) Shop drawings and working drawings as described in subsection 105.02 of the CDOT Standards Specification for Road and Bridge Construction Manual which can be found at: www.coloradodot.info/business/designsupport/construction-specifications/2011-Specs/2011-Specs-Bood.pdf

(2) Mix designs

(3) Contractor performed design work as required by the plans and specifications

(4) Approved value engineering change proposals

v. 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).

vi. 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.

vii. 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 **§17** (Notices and Representatives) within seven days of Grantee's receipt of such notice.

viii. 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 **§14**.

15. 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 **§17**. 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 **§16**. 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.

16. REMEDIES

If Grantee is in breach under any provision of this Grant, the State shall have all of the remedies listed in this **§16** in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in **§15(B)** provided however, that the State may terminate this Grant pursuant to **§16(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 **§16(A)** or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with **§17**. 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 **§16(A)(i)**.

iii. Payments

If this Grant is terminated by the State pursuant to this **§16(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

Request 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.

17. 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:

Carol Anderson
CDOT Region 1
2000 South Holly Street
Denver, CO 80222
303-512-5993

B. Grantee:

Kim Blair
City and County of Denver
201 West Colfax Avenue, Dept 506
Denver, CO, 80202
720-865-3119

18. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

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

19. 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. 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.

20. 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 **§20** 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.

21. 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.

B. Binding Effect

Except as otherwise provided in **§21(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

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 Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 USC 2671 *et seq*., as applicable, as now or hereafter amended.

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. **Colorado** Special Provisions,
ii. **The Provision of the main body of this Grant**,
iii. **Exhibit A** (Scope of Work and Budget),
iv. **Exhibit B** (FASTER Program Requirements),
v. **Exhibit C** (Funding Provisions),
vi. **Any** executed Option Letter, and
vii. Other **Exhibits** in descending order of their attachment.

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*.

22. 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

No term or condition of this Grant shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 *et seq*., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 *et seq*., as applicable now or hereafter amended.

D. INDEPENDENT CONTRACTOR

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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23. 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.**

GRANTEE **City and County of Denver**	**STATE OF COLORADO** **John W. Hickenlooper, Governor** **Colorado Department of Transportation** **Shailen P. Bhatt – Executive Director**
_____ Michael B. Hancock, Mayor Attest (Seal) By: _____ Debra Johnson, Clerk and Recorder Of The City and County of Denver APPROVED AS TO FORM: City Attorney for the City and County of Denver By: _____	_____ **By: Joshua Laipply, P.E., Chief Engineer** 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 **Date:** _____
RECOMMENDED AND APPROVED: By: _____ Manager of Public Works REGISTERED AND COUNTERSIGNED: By:_____ Manager of Finance CONTRACT CONTROL NUMBER _____ By: _____ Timothy O'Brien, Auditor	**LEGAL REVIEW** **Cynthia H. Coffman, Attorney General** **By:** _____ Signature – Assistant Attorney General **Date:** _____

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.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Colorado Department of Transportation

Date:_____

24. EXHIBIT A (Scope of Work)

FSA M320-106 (21363)

Preliminary and Final Design, NEPA Environmental Clearance (CatEx), ROW and Utility Clearances including Construction of an underpass for the High Line Canal at Mississippi and S. Parker Road located in the City and County of Denver (West & South) and Arapahoe County (North & East). The underpass is 14-feet wide, containing a 10-foot tall box culvert, approximately 160 feet in length, located north of the high line canal and north of the existing trail along the canal. On the approaches to the box culvert, a retaining wall would be constructed between the trail and the service road, and also for a short distance on the south side of the trail. The project will include wayfinding signage and 20 bicycle parking spaces.

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25. EXHIBIT B (FASTER Program Requirements)

FASTER Program Requirements

1. PROJECT PAYMENT PROVISIONS

A. The State will reimburse the Grantee for incurred costs relative to the Project following the State's review and approval of such charges, subject to the terms and conditions of this Grant. Provided, however, that charges incurred by the Grantee prior to the Effective Date of this Grant will not be charged by the Grantee to the Project, and will not be reimbursed by the State.

B. The State will reimburse the Grantee's reasonable, allocable, allowable costs of performance of the Work, not exceeding the maximum total of this Grant. The applicable principles described in Exhibit D shall govern the allowability and allocability of costs under this Grant. The Grantee shall comply with all such principles. To be eligible for reimbursement, costs by the Grantee shall be:

- **i.** in accordance with the provisions, terms and conditions of this Grant;
- **ii.** necessary for the accomplishment of the Work;
- **iii.** reasonable in the amount for the Goods and Services provided;
- **iv.** actual net cost to the Grantee (i.e. the price paid minus any refunds, rebates, or other items of value received by the Grantee that have the effect of reducing the cost actually incurred);
- **v.** incurred for Work performed after the Effective Date of this Grant; and
- **vi.** satisfactorily documented.

Examples of ineligible costs include:

- **i.** Staff or administrative overhead costs of the Grantee, unless specifically allowed for in the Scope of Work;
- **ii.** Fines and penalties; and
- **iii.** Entertainment expenses.

C. The Grantee shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards and principles (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that Grant Funds are expended and costs accounted for in a manner consistent with this Grant and Project objectives:

- **i.** All allowable costs charged to the Project, including any approved services contributed by the Grantee or others, shall be supported by properly executed payrolls, time records, invoices, grants or vouchers evidencing in detail the nature of the charges.
- **ii.** Any check or order drawn up by the Grantee, including any item which is or will be chargeable against the Project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Grantee, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, grants, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

D. The Grantee will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the Pproject. The Grantee's invoices shall include a description of the amounts of Services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State.

E. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this Grant must be received by the State within 60 days after termination of this Grant.

- **i.** Payments pursuant to this Grant shall be made in whole or in part, from available funds, encumbered for the purchase of the described services. If this Grant is terminated, final payment to the Grantee may be withheld at the discretion of the State until completion of final audit.

2. STATE AND GRANTEE COMMITMENTS

CDOT and the Grantee also agree to ensure the Project is completed within the applicable design and construction standards in accordance with **Exhibit G** – State and Grantee Commitments.

3. PROCUREMENT STANDARDS
The Grantee agrees to carry out its procurements consistent with the general procurement standards of the State. The Grantee agrees to follow the general procurement standards set forth in **Exhibit F**.

4. CONFORMANCE WITH LAW
The Grantee and its agent(s) will adhere to all applicable state and federal laws, Executive Orders and implementing regulations as they currently exist and may hereafter be amended. Further, the Grantee agrees to comply with the intent and requirements of the National Environmental Policy Act (NEPA) regardless of whether or not there is federal funding involved, as is consistent with CDOT's Environmental Stewardship Guide.

5. NON DISCRIMINATION
The Grantee agrees to comply with and ensure any Sub grantees comply with, the requirements of:

A. The American with Disabilities Act, Title II, and its implementing regulations--28 CFR Part 35, and 49 CFR parts 27, 37 and 38; and

B. The Civil Rights Act of 1964, Titles VI and VII, and their implementing regulations.

6. STATE INTEREST This section applies if box checked ☒
The Grantee understands and agrees that the State retains a State interest in any real property, or equipment financed with State assistance (Project property) until, and to the extent that the State relinquishes its State interest in that Project property, as described in **Exhibit A**. All State interests in real property or equipment shall survive termination, expiration or cancellation of this Grant. With respect to any Project property financed with State assistance under this Grant, the Grantee agrees to comply with the following:

A. Use of Project Property. The Grantee agrees to use Project property for appropriate Project purposes for the duration of the useful life of that property, as required by the State and set forth in the scope. Should the Grantee unreasonably delay or fail to use Project property during the useful life of that property, the Grantee agrees that it may be required to return the entire amount of the State assistance expended on that property. The Grantee further agrees to notify the State immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Grantee has made to CDOT.

B. Maintenance. The Grantee agrees to maintain Project property in good operating order to the State's satisfaction.

C. Records. The Grantee agrees to keep satisfactory records pertaining to the use of Project property, and submit to the State upon request such information as may be required to assure compliance with this Section.

D. Encumbrance of Project Property. The Grantee agrees to maintain satisfactory continuing control of Project property as follows:

i. Written Transactions. The Grantee agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party grant, subgrant, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing State interest in that Project property.

ii. Oral Transactions. The Grantee agrees that it will not obligate itself in any manner to any third party with respect to Project property.

iii. Other Actions. The Grantee agrees that it will not take any action adversely affecting the State interest in or impair the Grantee's continuing control of the use of Project property.

E. Transfer of Project Property. The Grantee understands and agrees as follows:

i. Grantee Request. The Grantee may transfer any Project property financed with State assistance to another public body or private nonprofit entity to be used for the same purpose set forth herein with no further obligation to the State Government, provided the transfer is approved by the State in writing.

ii. State Government Direction. The Grantee agrees that the State may direct the disposition of, and even require the Grantee to transfer, title to any Project property financed with State assistance under this Grant if it is found that the Project property is not being used for the intended purpose as stated in the Scope of Work.

iii. Leasing Project Property to Another Party. If the Grantee leases any Project property to another party, the Grantee agrees to retain ownership of the leased Project property, and assure that the lessee will use the Project property appropriately, either through a written lease between the Grantee and lessee, or another similar document, consistent with the Project purpose set forth herein. Upon request by the State, the Grantee agrees to provide a copy of any relevant documents.

F. Disposition of Project Property. The Grantee agrees that the State may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

i. Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Grantee agrees as follows:

a). Notification Requirement. The Grantee agrees to notify the State immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

b). Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Grantee agrees that the State retains a State interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the State interest in the Project property shall be determined by the ratio of the State assistance awarded for the property to the actual cost of the property. The Grantee agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

(1) Equipment. The Grantee agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment as established or approved by the State. The fair market value of Project equipment shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage.

(2) Real Property. The Grantee agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the State, or by straight line depreciation, whichever is greater.

(3) Exceptional Circumstances. The Grantee agrees that the State may require the use of another method to determine the fair market value of Project property. In unusual circumstances, the Grantee may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the State may consider any action taken, omission made, or unfortunate occurrence suffered by the Grantee with respect to the preservation of Project property withdrawn from appropriate use.

c). Financial Obligations to the State. The Grantee agrees to remit to the State the State interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Grantee may fulfill its obligations to remit the State interest by either:

(1) Investing an amount equal to the remaining State interest in like-kind property that is eligible for assistance within the scope of the Project that provided State assistance for the Project property prematurely withdrawn from use; or

(2) Returning to the State an amount equal to the remaining State interest in the withdrawn Project property.

G. State Interest-Project. The State shall protect its interest in the equipment being obtained with Grant Funds.

H. Insurance Proceeds. If the Grantee receives insurance proceeds as a result of damage or destruction to the Project property, the Grantee agrees to:

i. Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

ii. Return to the State an amount equal to the remaining State interest, based on straight line depreciation, in the damaged or destroyed Project property.

I. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Grantee's knowledge and consent, the Grantee agrees to restore the Project property to its original condition or refund the value of the State interest, based on straight line depreciation, in that property, as the State may require.

J. Responsibilities After Project Closeout. The Grantee agrees that Project closeout by the State will not change the Grantee's Project property management responsibilities as stated in this Section of the Grant.

7. RAILROADS This section applies if box checked ☐

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Grantee shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Grantee shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning State or Federal-aid projects involving railroad facilities, including:

A. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.

B. Obtaining the railroad's detailed estimate of the cost of the Work.

C. Establishing future maintenance responsibilities for the proposed installation.

D. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.

E. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

8. UTILITIES, ACCESS, RIGHT OF WAY This section applies if box checked ☒

A. Utilities. ☒ If necessary, the Grantee will be responsible for obtaining the proper clearance or approval from any utility company, local, State, or federal government agency, or other entity which may become involved in this Project. CDOT will reasonably assist Grantee in this regard in all cases in which CDOT is in a unique position to do so, provided that in no case will CDOT be required to expend State funds to provide such assistance. Prior to this Project being advertised for bids, the Grantee will certify in writing to the State that all such clearances have been obtained.

B. Access. ☒ The Grantee shall be responsible for obtaining an access permit from CDOT Region offices. The Grantee shall be responsible for obtaining a use and occupancy permit from the State. Prior to this Project being advertised for bids, the Grantee will certify in writing to the State that all such clearances have been obtained.

C. Right of Way. ☒ The parties acknowledge that the Project is for the mutual benefit of the Grantee and CDOT, and that it shall be constructed on State right of way. As a result of the Project being constructed on State right of way, the Grantee shall be responsible for obtaining an approved Interchange Approval consistent with CDOT Policy Directive 1601. The Grantee shall also be responsible for executing a grant with CDOT that addresses how construction oversight shall be coordinated and carried out.

If the Project includes right of way, prior to this Project being advertised for bids, the Grantee will certify in writing to the State that all right of way has been acquired in accordance with the applicable State and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with all federal and state statutes, regulations, CDOT policies and procedures, 49 CFR Part 24, the Uniform Act government-wide regulation-, the FHWA "Project Development Guide" and CDOT's "Right of Way Operations Manual".

Allocation of responsibilities can be as follows:

i. Federal participation in right of way acquisition (3111 charges), relocation (3109 charges)

activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);

ii. Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or

iii. No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Grantee's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Operation Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

9. DISADVANTAGE BUSINESS ENTERPRISE ("DBE") EFFORTS

The State encourages the Grantee to utilize small businesses owned by minorities, women and disadvantaged individuals to the greatest extent possible without sacrificing adequate competition. The Grantee is reminded of the illegality of discrimination and of the need to take all necessary and reasonable steps to ensure non-discrimination in the area of contracting and procurement and to create a level playing field where small minority, women, and disadvantaged businesses can compete fairly in CDOT assisted contracts and procurements. This policy specifically upholds the Transportation Commission's commitment to fair and equitable business practices and is supported by CDOT's small business development programs.

The CDOT Center for Equal Opportunity (EO) can provide lists of qualified DBE/MBE/WBE vendors as well as other technical assistance. Inquiries can be directed to the Director of Center for Equal Opportunity or Business Team Supervisor at 303-757-9234.

10. MAINTENANCE OBLIGATIONS This section applies if box checked ☒

The Grantee will maintain and operate the improvements constructed under this Grant at its own cost and expense during their useful life, in a manner reasonably satisfactory to the State. The Grantee will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Grantee's obligations to maintain such improvements. The State may make periodic inspections of the Project to verify that such improvements are being adequately maintained.

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26. EXHIBIT C (Funding Provisions)

FUNDING PROVISIONS

Cost of Work Estimate

The estimated total cost of the Work is $3,201,000.00 which is to be funded as follows:

1 TOTAL PROJECT FUNDS	
a. State Funds (FY 2017 FASTER Transit @ 100%)	$3,201,000.00
b. ***Required Local Agency Funding*** (FY 2017 @ 0%)	$0.00
TOTAL PROJECT FUNDS	$3,201,000.00
2 ESTIMATED PAYMENT TO LOCAL AGENCY	
a. State Budgeted Funds (1a)	$3,201,000.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	**$3,201,000.00**
3 FOR CDOT ENCUMBRANCE PURPOSES	
a. State Funds Budgeted (1a)	$3,201,000.00
b. Required Local Agency Funding	($0.00)
c. Less ROW Acquisition 3111 and/or ROW Relocation 3109	($0.00)

Estimated Total Encumbrance:			$3,201,000.00
NOTE: $401,000.00 of Design funds are currently available for the work. State FASTER Construction funds will be encumbered in the future by a unilateral Option Letter of formal Amendment when they are authorized.			
WBS Element 21363.10.30	DESIGN	3020	$401,000.00
21363.20.10	CONST	3301	$0.00

27. EXHIBIT D (Grantee Payment Checklist)

GRANTEE PAYMENT CHECKLIST

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 by CDOT. CDOT shall provide notice of any such changes to Grantee. 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.

☐ **Invoice from local entity (Tier I and some Tier IIs)**

- ✓ Project and Project Code
- ✓ Project Location
- ✓ Invoice number and billing date
- ✓ Previous Billed, Current Billing, and Billed to date
- ✓ Local Agency costs
- ✓ Consultant or Sub-grantee costs
- ✓ Federal portion
- ✓ Local portion
- ✓ Net payment due
- ✓ Signature of local entity representative

☐ **Copies of invoices from local agency contractors (Tier I and some Tier IIs)**

- ✓ The specific document the contractor used to invoice the local agencies. The local agency is responsible for ensuring that the backup matches the invoice and is eligible for reimbursement.
- ✓ If the local agency pays the contractor a discounted amount, the full amount cannot be reimbursed to the local agency, only the discounted amount, less the local agency match.
- ✓ Please ensure that all payment vouchers from the local agencies state "ok to pay" or some notation of when paid or approved by, etc.
- ✓ Invoice(s) should match check amounts.
- ✓ A CDOT employee knowledgeable about the work being invoiced has to approve the local agency invoices in order for CDOT to make payments; the invoice must be paid within 45 days of receipt according to state statute.
- ✓ Statements are not acceptable in lieu of an invoice.

☐ **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)**

- ✓ DOT requires all employees working on projects to provide time sheets with a breakdown of hours worked by day displaying 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.
- ✓ Backup documentation for payroll expenses includes the timesheet and an hourly or salary rate or a payroll ledger indicating total hours, wages, and benefits. The rate only needs to be submitted once and will be referred to for future invoices.
- ✓ If there is sensitive information such as social security numbers or addresses, please block that information.
- ✓ If the local agency uses a temp agency and submits the invoice from the temp agency for reimbursement, CDOT needs the same documentation the agency would use for approval before the local agency paid the temp agency.
- ✓ If the local agency used a quarterly or semester based system of timekeeping, the local agency cannot bill monthly for payroll expenses (this is especially true for colleges and universities). The local agency needs the backup from the timekeeping system and payroll records which would allow the local agency to bill quarterly or by semester.

☐ **In kind match – If an entity 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 match the in-kind portion of the project must be included in project application and scope of work attached to the contract or purchase order. FTA does not require pre-approval of in kind, but CDOT does.
- ✓ Expenditure ledger from the local agency must also show the in kind match in their general ledger. CDOT needs a copy of this general ledger showing the in kind match.
- ✓ If the local agency is using in kind match on invoices to CDOT, they need to attach a drawdown page indicating how much in-kind match has been used.
- ✓ Full documentation will be required on the use of in-kind match, regardless of the Tier held by the grantee.

☐ **Indirect costs (All Tiers)**

- ✓ If indirect costs are being requested, please submit an approved indirect letter provided by either CDOT or Colorado Department. The letter must state what indirect costs are allowed and at what percentage. The indirect letter only needs to be submitted once and will be retained on file for future invoices. The indirect cost plan must be reconciled annually and an updated letter submitted each year.

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28. EXHIBIT E (C-49 CFR 18 Subpart C)
49 CFR 18 Subpart C

This **Exhibit E** includes select applicable provisions as they exist or as of the Effective Date. Grantee is responsible for compliance with all State and federal laws, rules and regulations as they currently exist and may hereafter be amended.

Financial Administration

Sec. 18.20 Standards for financial management systems.

(a) A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to-

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially-assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

Sec. 18.22 Allowable costs.

(a) Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) Applicable cost principles. For each kind of organization, there is a set of federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a	Use the principles in--

State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OMB Circular A122 as not subject to that circular.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the federal agency.

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29. EXHIBIT F (General Procurement Standards)
General Procurement Standards

This **Exhibit F** includes select applicable provisions as they exist or as of the Effective Date. Grantee is responsible for compliance with all State and federal laws, rules and regulations as they currently exist and may hereafter be amended.

General Procurement Standards

1. Maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of the contract or purchase order.
2. Maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.
3. Maintain procedures that provide for the review of proposed procurements to avoid purchase of unnecessary or duplicative items.
4. Use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
5. Make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
6. Maintain records sufficient to detail the significant history of the procurement. Including:
    a. Rationale for the method of procurement;
    b. Selection of contract type;
    c. Contractor selection or rejection;
    d. Basis for the contract price; and
    e. Other.
7. Maintain protest procedures to handle and resolve disputes relating to procurements.
8. All procurement transactions shall be conducted in a manner providing full and open competition.
9. Maintain written selection procedures for procurement transactions.
10. Ensure that all pre-qualified list of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.
11. Method of procurements to be followed:
    a. Small Purchase – is a relatively simple and informal procurement method for securing services, supplies, or other property that do not cost more than $150,000.00. If small purchase procedures are used, price or rate quotation shall be obtained from at lease three sources. Quotations will be in writing if for goods in excess of $10,000 and if for services in excess of $25,000.00.
    b. Formal Sealed Bids –are publicly solicited and a firm-fixed-prices (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. This method is preferred for procuring construction. If this method is used, the following requirements apply:
        i. Must be publicly advertised;
        ii. Must give at least 14 days for bidders to respond;
        iii. Must include any specifications and pertinent attachments to all bidders to respond properly;
        iv. All bids will be publicly opened at the time and place prescribed in the invitation for bid;

v. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder; and

vi. Any or all bids may be rejected if there is a sound documented reason.

c. Competitive Proposals – are generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

i. Request for proposals will be publicized;

ii. Identify all evaluation factors and their relative importance;

iii. Proposals will be solicited from an adequate number of qualified sources;

iv. Have a method for conducting technical evaluation of the proposals received and for selecting awardees;

v. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

vi. May be used for qualifications-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected. Note – the method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms. See also **Exhibit I** for procurement of A/E professional services.

d. Noncompetitive Proposals - may be used only when the award of a contract is infeasible under the other three methods and the following circumstances applies:

i. The item is available only from a single source;

ii. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

iii. The awarding agency authorizes noncompetitive proposals; or

iv. After solicitation of a number of sources, competition is determined inadequate.

12. Small, Minority and Women owned business enterprise and labor surplus area firms – In accordance with **Exhibit B**, Section 9 take affirmative steps to assure that minority and women business enterprises, and labor surplus area firms are used when possible.

a. Placing qualified firms on solicitation lists;

b. Assuring that firms are solicited whenever they are potential sources;

c. Dividing total quantities to permit maximum participation;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by S/M/W owned firms; and

e. Using the services of the Small Business Administration, Minority Business Development Agency of the Department of Commerce, the CDOT EO office or other agencies that qualify S/M/W owned firms.

13. Bonding requirements – For construction or facility improvement contracts or subcontracts exceeding $100,000.00.

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30. EXHIBIT G (State and Grantee Committments)
State and Grantee Commitments

A. Design – This section applies if box checked: ☒

1. Work including preliminary design or final design (the "Construction Plans"), design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), requires that the Grantee comply with the following requirements, as applicable:

a. perform or provide the Plans, to the extent required by the nature of the Work;
b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT;
c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Grantee specifications if approved by CDOT;
d. include details of any required detours in the Plans, in order to prevent any interference of the construction Work and to protect the traveling public;
e. stamp the Plans produced by a Colorado Registered Professional Engineer;
f. provide final assembly of Plans and Grant documents;
g. be responsible for the Plans being accurate and complete; and
h. make no further changes in the Plans following the award of the construction contract except in writing approved by all the Parties. The Plans shall be considered final when approved and accepted by the Parties hereto, and when final they shall be deemed incorporated herein.

2. Grantee:

a. shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects";
b. (If applicable) shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
c. may enter into a contract with a Subgrantee to do all or any portion of the Plans and/or of construction administration. Provided, however, that if State funds are involved in the cost of such work to be done by a Subgrantee, that Subgrantee subgrant (and the performance/provision of the Plans under the subgrant) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State, including those in this Grant. If the Grantee does enter into a subgrant with a Subgrantee for the Work:
   (1) Grantee shall submit a certification that procurement of any design Subgrantee subgrant complied with the requirements of 23 CFR 172.5(1) prior to entering into subgrant. The State shall either approve or deny such procurement. If denied, the Grantee may not enter into the subgrant.
   (2) Grantee shall ensure that all changes in the Subgrantee subgrant have prior approval by the State. Such changes in the subgrant shall be by written supplement grant. As soon as the subgrant with the Subgrantee has been awarded by the Grantee, one copy of the executed subgrant shall be submitted to the State. Any amendments to such subgrant shall also be submitted.
   (3) it shall require that all Subgrantee billings under that subgrant shall comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
   (4) it (or its Subgrantee) shall use the CDOT procedures described to administer that design Subgrantee subgrant, to comply with 23 CFR 172.5(b) and (d).
   (5) it may expedite any CDOT approval of its procurement process and/or Subgrantee subgrant by submitting a letter to CDOT from the certifying Grantee's attorney/authorized representative certifying compliance with 23 CFR 172.5(b) and (d).
   (6) it shall ensure that its Subgrantee subgrant complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) "The design work under this Grant shall be compatible with the requirements of the Grant between the Grantee and the State (which is incorporated herein by this reference) for the design/construction of the Project. The State is an intended third party beneficiary of this subgrant for that purpose."

(b) "Upon advertisement of the Project work for construction, the Subgrantee shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the Project."

(c) "The Subgrantee shall review the construction Subgrantee's shop drawings for conformance with the subgrant documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work."

d. The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Grantee to make changes therein that the State determines are necessary to ensure compliance with State and federal requirements.

B. Construction – This section applies if box checked: ☒

1. Work including construction requires that, the Grantee perform the construction and construction administration in accordance with the approved Plans and CDOT oversight. Such administration shall include Project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of grant payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for Grant modification orders and minor subgrant revisions; processing Subgrantee claims; construction supervision; and meeting the Quality Control requirements of CDOT which can be found in the FHWA and CDOT Stewardship agreement located at:
http://www.coloradodot.info/business/permits/accesspermits/references/stewardship-agreement.pdf .

2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Grantee, due to the failure of the Grantee or its Subgrantee to correct Project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

3. Grantee:

a. shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Grantee Project Engineer ("LAPE"), to perform that administration. The LAPE shall administer the Project in accordance with this Grant, the requirements of the construction subgrant and applicable State procedures.

b. if bids are to be let for the construction of the Project, it shall advertise the call for bids upon approval by the State and award the construction subgrant(s) to the low responsible bidder(s) upon approval by the State.

(1) In advertising and awarding the bid for the construction, the Grantee shall comply with applicable requirements of 23 USC §112, 23 CFR Parts 633 and 635, and CRS §24-92-101 et seq. Those requirements include, without limitation, that the Grantee/Subgrantee shall comply with terms and conditions as required by 23 CFR §633.102(e).

(2) The Grantee has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Grantee must declare the acceptance or rejection within 3 working days after said bids are publicly opened.

(3) By indicating its concurrence in such award, the Grantee, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this Project if no additional State funds will be made available for the Project. This paragraph also applies to Projects advertised and awarded by the State.

c. If all or part of the construction Work is to be accomplished by Grantee personnel (i.e. by force account), rather than by a competitive bidding process, the Grantee will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR Part 635, Subpart B, Force Account Construction.

(1) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Grantee, the State and FHWA (if needed) in advance of the Work, as provided for in 23 CFR §635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
(2) An alternative to the above is that the Grantee may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.
(3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.
(4) All force account work shall have prior approval of the State and/or FHWA (if needed) and shall not be initiated until the State has issued a written notice to proceed.

C. State's Obligations

1. The State will perform a final Project inspection prior to Project acceptance as a "Quality Control/Assurance" activity. When all Work has been satisfactorily completed, the State will sign the CDOT Form 1212 (for FHWA), if applicable.

2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Grantee within the Work of this Grant.

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31. EXHIBIT H (Sample Option Letter)

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)
NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

Date:	**State Fiscal Year:**	**Option Letter No.**	**Option Letter CMS Routing #** **Option Letter SAP #**
Original Contract CMS #		**Original Contract SAP #**	

Vendor name: _____

SUBJECT:

A. Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(*a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.*).

B. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

C. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (*Insert the following language for use with the Option A*):
In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for **Exhibit C** shall be labled as follows: **C-2**, **C-3**, **C-4**, etc.*).

Option B (*Insert the following language for use with Option B*):
In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) 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**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2**, **C-3**, **C-4**, etc*.

Option C (*Insert the following language for use with Option C*):
In accordance with the terms of the original Agreement (*insert CMS routing # of original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here),* the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) 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**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2**, **C-3**, **C-4**, etc.; and no more*

than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment).

(*The following language must be included on ALL options*):
The total encumbrance as a result of this option and all previous options and/or amendments is now (*insert total encumbrance amount*), as referenced in **Exhibit** (***C-1***, ***C-2***, *etc., as appropriate*). The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (*indicate total budgeted funds*) as referenced in **Exhibit** (***C-1***, ***C-2***, *etc., as appropriate*) of the original Agreement.

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

APPROVALS:

State of Colorado:
John W. Hickenlooper, Governor

By: _____ Date: _____
Shailen P. Bhatt, Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. 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 Controller
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

Form Updated: December 19, 2012

32. EXHIBIT I (Security Agreement)

SECURITY AGREEMENT (IF APPLICABLE)

This Security Agreement is made by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, DIVISION OF TRANSIT AND RAIL, ("State") and City and County of Denver, ("Grantee").

A. Purpose. This Security Agreement is made for the purpose of securing the State interest in transit vehicles or other project equipment ("Project Equipment") purchased with State grant funds awarded to the Grantee pursuant to the Grant Agreement between the State and Grantee dated this _____day of _____, 20____ and identified as contract # 471001083 ("Grant").

The security interest granted to the State herein is to ensure that the State may access, protect and, if necessary, dispose of the federal interest in each item of Project Equipment and to ensure the proper use of the Project Equipment. The Grantee shall have no right in the State interest in such Project Equipment.

B. Project Equipment. Not later than three days after the purchase and acceptance of Project Equipment, the Grantee shall complete and return to the State a "Certificate of Procurement and Acceptance" form, which then becomes Addendum I to this Security Agreement. In the case of vehicle procurement, this certificate must indicate the year, make, model, VIN, and any other information needed to register the vehicle.

C. Security Interest. In consideration of the value provided to the Grantee under the Grant, the Grantee hereby gives and grants to the State a security interest in the Project Equipment described in Addendum I and /or described below as follows:

MAKE/MODEL/VIN or description of equipment: _____.

This security interest shall apply to the Project Equipment acquired pursuant to the Grant whether purchased before or after the date this Security Agreement is executed. The Grantee hereby authorizes the State to describe in the space above the Project Equipment subject to this Security Agreement.

D. Lien. The State may place a lien on the title of each Project Equipment vehicle based upon this Security Agreement. The State shall retain physical possession of the titles of such Project Equipment vehicles and the Grantee agrees that the State shall be considered "in possession" of such vehicles for the purpose of any document required by State law to repossess such vehicles if necessary.

E. Disposition of Equipment. In addition to the security interest granted herein, the Grantee agrees to and acknowledges the right of the State to remove all Project Equipment from the Grantee's premises and to take possession of any of the Project Equipment, if the Grantee fails to satisfactorily perform the Project services as detailed in the Grant, or if the State determines for any other reason, including but not limited to termination of the Grant, that the disposition of the State interest in such Project Equipment is in the best interest of the State. The Grantee agrees that it will in no way oppose the State's exercise of such right and that it will assist the State to obtain possession and to remove such vehicles.

F. Assignment. The Grantee agrees not to assert against any assignee of the State any defenses or claims the Grantee may have against the State.

Grantee hereby executes this Security Agreement as of the date below:

ATTEST: _____ FOR THE GRANTEE By:_____

Print Name:_____

Date: _____ Title: _____

33. EXHIBIT J (Grants with Professional Subgrantee Services)

State or Federal-Aid Project Agreements with Professional Subgrantee Services

The Grantee shall use these procedures to implement State or Federal-aid project agreements with professional Sub grantee services including, but not limited to engineering, design, or architectural services.

23 CFR Part172 applies to a federally funded Grantee project agreement administered by CDOT that involves professional Sub grantee services. 23 CFR §172.1 states "The policies and procedures involve federally funded grants for engineering and design related services for projects subject to the provisions of 23 USC §112(a) and are issued to ensure that a qualified Subgrantee is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR §172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional Subgrantee services under a federally funded Subgrantee subgrant administered by CDOT.

Preference of Colorado Labor

Grantee certifies, warrants, and agrees that it has knowledge of the "Keep Jobs in Colorado Act of 2013" codified at Sections 8-17-101, et seq., of the Colorado Revised Statutes and accompanying rules, 7 CCR 1103-6, and that Colorado labor shall be employed to perform at least eighty percent (80%) of the Work.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Subgrantee Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR Part172 and Colorado Revised Statute CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR Part 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Grantee must follow in obtaining professional Subgrantee services. This guidance follows the format of 23 CFR Part 172. The steps are:

1. The contracting Grantee shall document the need for obtaining professional services.
2. Prior to solicitation for Subgrantee services, the contracting Grantee shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in CRS §24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for grants in conformity with the requirements of CRS §24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for Subgrantee services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of ten percent (10%) for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the Subgrantee should be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime Subgrantee and their team. It also shows which criteria are used to short-list and to make a final selection.

   The short-list is based on the following evaluation factors:

   a. Qualifications,

   b. Approach to the project,

   c. Ability to furnish professional services.

   d. Anticipated design concepts, and

e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the Subgrantee's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority Subgrantees.

6. Once a Subgrantee is selected, the Grantee enters into negotiations with the Subgrantee to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for grants expected to be greater than $50,000. Federal reimbursement for costs are limited to those costs allowable under the cost principles of 48 CFR Part 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six (6) to fifteen (15) percent of the total direct and indirect costs.
7. A qualified Grantee employee shall be responsible and in charge of the project to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the Grant. At the end of project, the Grantee prepares a performance evaluation (a CDOT form is available) on the Subgrantee.
8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR §18.42, which provide for records to be kept at least three (3) years from the date that the Grantee submits its final expenditure report. Records of projects under litigation shall be kept at least three (3) years after the case has been settled.

The CRS §§24-30-1401 through 1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the eight (8) steps just discussed.

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34. EXHIBIT K (Grantee Contract Administration Checklist)
Grantee Contract Administration Checklist

The following checklist has been developed to ensure that all required aspects of a project approved for federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for federal funding in the Statewide Transportation Improvement Program, CDOT Project Manager, Grantee Project Manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual Grant. CDOT will not process a Grant without this completed checklist. It will be reviewed at the "Final Office Review" meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION
GRANTEE CONTRACT ADMINISTRATION CHECKLIST

Project No. FSA M320-106	SR17002.062	Project Code 21363	Region 01
Project Location Highline Canal: Parker/Mississippi		Date 10/21/2016	
Project Description Highline Canal: Parker/Mississippi			
Grantee City and County of Denver		Grantee Project Manager Kim Blair	
CDOT Resident Engineer John Vetterling		CDOT Project Manager Carol Anderson	

INSTRUCTIONS:

This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this Grant. The checklist becomes an attachment to the Grant. Section numbers correspond to the applicable chapters of the *CDOT Local Agency Manual.*

The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Grantee is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.

Tasks that will be performed by headquarters staff will be indicated. The regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Grantee Project Manager, and submitted to the CDOT Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Grantee Project Manager, will prepare and distribute a revised checklist.

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		Grantee	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		**X**
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 –State or Federal-aid Program Data. Requires FHWA concurrence/involvement)		**X**
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	
5.2	Prepare Grantee/CDOT Inter-Governmental Agreement (see also Chapter 3)		**X**
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5.9	Obtain Utility and Railroad Agreements	X	#
5.10	Conduct Final Office Review (FOR)	X	
5.11	Justify Force Account Work by the Grantee	X	#
5.12	Justify Proprietary, Sole Source, or Grantee Furnished Items	X	#
5.13	Document Design Exceptions - CDOT Form 464	X	#
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	
5.15	Ensure Authorization of Funds for Construction		**X**
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)	X	
6.2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) John Vetterling 10/21/2016 CDOT Resident Engineer (Signature on File) Date		**X**
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than $1 million (CDOT Region EEO/Civil Rights Specialist)		**X**
6.4	Title VI Assurances:	X	#
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	**#**
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute “Advertisement Set” of Plans and Specifications	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		Grantee	CDOT
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals	X	
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals	X	
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		**X**
7.8	Approve Rejection of Low Bidder		**X**
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety	X	
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	X	
	Pre-survey 1. Construction staking 2. Monumentation	 X X	
	Partnering (Optional)	N/A	N/A
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	X	
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)	X	
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Kim Blair 720-865-3141 Grantee Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		Grantee	CDOT
	Provide the name and phone number of the person authorized for this task. Kim Blair 720-865-3141 Grantee Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	#
8.12	Prepare Grantee Reimbursement Requests	**X**	
8.13	Prepare and Authorize Change Orders	X	#
8.14	Approve All Change Orders		**X**
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. John Vetterling 303-757-9914 CDOT Resident Engineer Phone number		**X**
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record 1. Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project 2. Update the form as work progresses 3. Complete and distribute form after work is completed	 X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: 1. Fabrication of structural steel and pre-stressed concrete structural components 2. Bridge modular expansion devices (0" to 6" or greater) 3. Fabrication of bearing devices	X X X X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Grantee Procedures ☐ CDOT Procedures ☒ 1. Generate IAT schedule 2. Schedule and provide notification 3. Conduct IAT	 X X	X
9.8	Approve mix designs Concrete Hot mix asphalt	 X X	
9.9	Check Final Materials Documentation	X	#
9.10	Complete and Distribute Final Materials Documentation	X	
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		Grantee	CDOT
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Grantee participation.)	X	**X**
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used … from the Contractor	N/A	N/A
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		**X**
11.11	Process Final Payment	X	
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Grantee Contract Administration Checklist		X

cc: CDOT Resident Engineer
CDOT Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Grantee Project Manager