

Request for Qualifications (RFQ)

Colorado Water Plan & Basin Implementation Plan Updates

Section 1: Overview

1.1 Issuing Company

This Request for Qualifications (RFQ) is issued by Brown and Caldwell in conjunction with the Colorado Water Conservation Board (CWCB) and basin roundtables for the Colorado Water Plan & Basin Implementation Plan Updates. All contact regarding this solicitation is to be directed via email to:

Matt Lindburg, P.E.
Brown and Caldwell
1527 Cole Boulevard, Suite 300
Lakewood, CO 80401
Email: mlindburg@brwncald.com

1.2 Purpose

In 2018, the CWCB initiated the process for updating Basin Implementation Plans (BIPs), and in 2019 a selection committee (comprised of roundtable chairs and CWCB staff) selected Brown and Caldwell as a general contractor (GC) to assist the CWCB and basin roundtables with the BIP and Colorado Water Plan (Water Plan) update process. With the completion of the consulting agreement in January 2020, the contract work to update the BIPs can begin.

The BIP updates will be supported by a Local Expert (LE) in each basin. The LE will support their roundtable in updating their BIP and, where applicable, the Colorado Water Plan (Water Plan). The LE will help complete the core duties of that effort including updating the BIPs, creating BIP strategy documents and BIP project lists, which comprise the bulk of the work and budget for this effort, as well as other duties described in the Anticipated Scope of Services. The LE will subcontract to the GC.

1.3 Schedule of Activities

Activity	Date	Time
RFQ posted on basin roundtable websites	January 28, 2020	
Inquiry deadline for written questions	February 7, 2020	5:00 pm
Answers to questions	February 14, 2020	5:00 pm
Submission deadline	February 28, 2020	5:00 pm
Evaluation of Statement of Qualifications	March 2, 2020 – March 13, 2020	
Basin roundtable interviews with top candidates (if needed)	March 16, 2020 – March 20, 2020	
Basin roundtable ranking of LEs submitted to Brown and Caldwell	March 28, 2020	
Brown and Caldwell phone interview with top ranked LE in each basin	March 30, 2020 – April 3, 2020	
Final selection of LE in each basin	April 10, 2020	
Subcontracting	April 13, 2020 – April 24, 2020	
Three-day kickoff workshop (tentative dates)	Last week of April 2020 or first week of May 2020	

1.4 Submission

All Statements of Qualification (SOQs) must be received by Brown and Caldwell no later than the date and time shown in the Schedule of Activities, Submission Deadline. Email submittals are encouraged, but hard copy submittals will also be accepted. It is the responsibility of the proposer to ensure that the proposal is received by Brown and Caldwell prior to the deadline. Prospective LEs mailing proposals should allow ample mail delivery time to ensure timely receipt of their proposals. Proposals received after the above date and time will not be considered.

SOQs submitted in hardcopy must be sealed and clearly identified as an SOQ for the Colorado Water Plan & Basin Implementation Plan Updates and shall show such information on the outside of the proposal packet.

A responsive proposal must include all items as outlined in Section 4.0.

1.5 Inquiries

Prospective proposers may make written inquiries concerning the RFQ to obtain clarification of requirements. No inquiries will be accepted after the date and time specified in the Schedule of Activities, "Inquiry deadline for written questions." Questions must be submitted in writing via email as an attachment. Please include the project name in the subject line of your email and include your name, company name, address, contact information, and the basin to which the question applies (if applicable). Send questions to Matt Lindburg with Brown and Caldwell at the email address listed in Section 1.1.

Answers to questions will be posted on basin roundtable websites and will include responses to general questions on the RFQ and questions specific to the basin.

1.6 Amendments to Request for Qualifications

In the event it should be necessary to revise any portion of this RFQ, an amendment will be posted on basin roundtable websites. Proposer MUST acknowledge any/all amendments to this RFQ in their submittal. It is the proposer's sole responsibility to monitor and access the basin's website for any amendments and to acknowledge and/or comply with all such published addenda as specifically instructed. Failure to acknowledge all amendments as instructed in each/all such addenda may cause rejection of the entire SOQ as non-responsive.

1.7 Restriction for Basin Roundtable Members

Active members of basin roundtables may not serve as a Local Expert. If a current basin roundtable member would like to serve as a Local Expert, they will need to step away from their roundtable membership.

1.8 Anticipated Scope of Services

The anticipated Scope of Services for LEs is attached to this RFQ.

1.9 Attachments

The following attachments are included as part of the Request for Qualifications:

- Anticipated Scope of Services
- Sample Brown and Caldwell "Project-Specific Subcontract for Professional Services with Task Orders"

- Terms and Conditions for the Personal Services Contract for Colorado Water Plan & Basin Implementation Plan Updates (the Prime Contract)

Section 2: Subcontract

Brown and Caldwell anticipates awarding one subcontract in each basin. The subcontract could be awarded to a single firm or a team of firms (depending on the nature of the work to be done and the capabilities of the local expert). If multiple firms form a team to serve as the LE in a basin, a primary point of contact with the prime subcontractor should be identified. All references to “proposer” or “contractor” or “offeror” throughout this RFP document shall be interpreted to mean the prime responding vendor, except where specifically noted otherwise. The selected subcontractor in each basin will be required to assume responsibility for all goods and services offered in its proposal, and Brown and Caldwell will consider the selected contractor to be the sole point of contact with regard to all contractual matters and responsibilities.

Additional details on the subcontract and award are below:

- **Contract duration:** The subcontract is anticipated to end June 30, 2022
- **Form of subcontract:** The subcontract will be a Brown and Caldwell-issued Professional Services contract with Task Orders.
- **Scopes of Services for Task Orders and overall subcontracting strategy:** The Scope of Services to be conducted during the BIP update is generally known, but specific tasks are currently unknown and will be developed by the GC and LE in conjunction with basin roundtable and CWCB input. As a result, it is anticipated that multiple Task Orders will be issued throughout the duration of the subcontract. The number of Task Orders will be minimized to the extent possible. Each Task Order will include a Scope of Services that can be defined and priced with a reasonable level of certainty as the BIP update progresses. The cumulative price of Task Orders will be limited to budget allocations assigned to each roundtable and the necessary division of labor between the GC and LE. The first Task Order will be issued once the Professional Services contract is executed, and it will cover tasks such as attendance at kickoff workshops, development of a BIP Update Work Plan, and initial review and update activities associated with basin roundtable project lists.
- **Measurement and payment:** Measurement and payment for the project will be on a time and materials basis based on the completed tasks
- **Insurance requirements:** Standard insurance requirements for Brown and Caldwell subcontracts and for the Prime contract are described in the attachments. Proposers should note in their submittals whether the insurance requirements can be met and, if they cannot be met, the types and amounts of insurance they carry.

Section 3: Budgetary Information

Each basin roundtable has been allocated a budget for consulting services necessary to complete the BIP update. The anticipated budget breakdown is shown in the table below. It is anticipated that the division of labor and budget between the LE and GC will be further defined once the BIP Update Work Plans are developed.

Local Expert services	\$120,000
Special studies conducted by Local or Subject Matter Expert	\$20,000
General Contractor services	\$140,000
Workshops	\$10,000
Total:	\$290,000

Section 4: Submittal Requirements

4.1 Statement of Qualification Format

Brown and Caldwell requests that Statements of Qualification submitted by prospective LEs meet the following format criteria:

- 10 pages or less, not counting front and back cover sheets and resumes
- If submitted electronically via email:
 - Adobe PDF format
 - Less than 20 MB in size
 - Can be printed on 8.5" x 11" paper
- If submitted in hard copy:
 - Printed on 8.5" x 11" paper

4.2 Required Content of SOQs

SOQs shall specify the basin for which they are submitted and shall include the following content. If a firm would like to serve as an LE in multiple basins, a separate SOQ shall be submitted for each basin.

Acknowledgement of Addenda

Acknowledgment of addenda (if any)

Company Information

Please include information such as the company's history, organizational charts, website information and any other information deemed relevant to the company.

Experience

Provide a brief summary of experience in the basin and on projects related to water planning, stakeholder engagement, and related technical evaluations. Include a list of at least three to five projects completed over the last 10 years that include information such as the client name, information about the overall need, the approach to implementation.

Personnel

Include brief biographies and resumes of key personnel that will be assigned to work on the project. Provide roles and responsibilities of all key team members and an organizational chart (if several personnel will be involved). Additionally, include resumes of any subcontractors that will be working with the firm on the project.

Management Summary

The firm must have the capacity and skill set to oversee and manage their LE budget and team. Provide a brief but clear summary which illustrates how the project will be overseen and how any partnering firm's skills will be utilized. Provide a description of how the firm approaches change management.

References

Provide names and contact details of two references for similar projects. References may be contacted at any stage of the evaluation process.

Billing Rates

Provide the billing rates of personnel expected to be assigned to work on the project.

Comments on the Subconsulting Agreement

Review the template subconsulting agreement and provide comments on the terms and conditions (if any) and the insurance requirements. If the prospective LE cannot meet the specified insurance requirements, the LE should state the amount of insurance coverage in the various categories that they can provide.

Section 5: Evaluation and Award

5.1 Evaluation Process and Award

It is anticipated that each basin roundtable will form an evaluation committee that will review the SOQs submitted for their basin and rank them based on their qualifications and the committee's opinion of the LE's ability to meet the basin roundtable's needs during the BIP update process. It is anticipated that the evaluation committee will review and score each of the SOQs based on the criteria listed below. The evaluation committee may choose to interview prospective LEs prior to developing a final ranking. Final rankings will be submitted to Brown and Caldwell.

Upon receipt of the final rankings of prospective LEs for each basin roundtable, Brown and Caldwell will conduct a final interview with the top ranked LE to evaluate the ability to agree to subcontract terms and to discuss potential issues that may prevent the subcontractor from fulfilling the anticipated Scope of Services. If it becomes apparent that subcontract terms will not be agreed upon or the top ranked LE cannot adequately provide the necessary services, negotiations with the top ranked prospective LE will cease, and negotiations with the second ranked prospective LE will be initiated (and so forth until an LE is chosen).

5.2 Evaluation Criteria

Proposals shall be evaluated using the following criteria and general weighting. While a numerical evaluation method may be used as an aid to evaluation, the selection ultimately is a business judgment that will reflect an integrated assessment of the relative merits of SOQs and interviews (if applicable) using the factors identified below. Brown and Caldwell reserves the right to reject any (or all) SOQs that pose, in the judgment of Brown and Caldwell, unacceptable risks of unsuccessful or untimely performance or costs exceeding the budget constraints.

Basin and Project Experience (30%)

Firm experience will be evaluated based on relevance to the basin and the potential work described in the attached Anticipated Scope of Services.

Personnel (30%)

Firm personnel will be evaluated based on the breadth and depth of experience, organization, and the likelihood of success in completing this project.

Management Summary (20%)

Firm will be evaluated on the capacity and skill set to manage and oversee the work associated with the LE and deliver services described in the Anticipated Scope of Services.

References (10%)

Input from references will be considered.

Billing Rates (10%)

Billing rates will be evaluated for their reasonableness based on the type of work being conducted.

5.3 Conflict of Interest

By submission of a response to this RFQ, the proposer agrees that, at the time of subcontracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services. The proposer shall further covenant that, in the performance of the contract, they shall not employ any person having any such known interest.

Attachment: Basin-Specific Scope of Services

Anticipated Scope of Services

for

Local Experts for the Arkansas Basin Roundtable

Basin Implementation Plan and Colorado Water Plan Updates

BACKGROUND:

In 2012, then Governor Hickenlooper issued an executive order to the Colorado Water Conservation Board (CWCB) to complete a state water plan by 2015. To coincide with the development of the Colorado Water Plan (Water Plan), each of the 9 basin roundtables would also need to develop their own Basin Implementation Plans (BIPs) for each of the state's 8 major river basins.

The BIPs were completed in 2014-2015 and were used to inform the 2015 Water Plan, which included basin summaries, goals, and actions. Both efforts were informed by an analysis of state water supply needs as identified in the 2010 Statewide Water Supply Initiative (SWSI 2010). The 2019 update to the SWSI 2010 analysis is now known as the Analysis and Technical Update to the Colorado Water Plan (herein, Technical Update).

While the Technical Update utilizes entirely new methodology to model future water needs in 2050 than previous efforts, the range of future water shortages (called "gaps") are largely similar to those expressed in SWSI 2010. To meet the gaps noted in the Water Plan and the Technical Update, basins will need to update their lists of identified basin projects – a foundational component of the initial BIPs.

In keeping with planning implementation goals in the Water Plan (Water Plan, Ch.11), the BIP updates were initiated in 2018 with a scoping effort that first surveyed stakeholder feedback and then created an Implementation Working Group (IWG) to help inform the scope of the BIP update. The Water Plan update itself is set to be initiated in 2020 (with a goal of having a final draft in 2022). To complete these efforts, the CWCB is funding a General Contractor (GC) and associated subcontractors to lead the collective BIP and Water Plan update effort.

The GC will assemble and lead a team of Local Experts across the 8 major river basins (9 basin roundtables) in keeping with each roundtable's specific needs and input.

The Local Expert (LE) will support their specified roundtable to complete work associated with the BIP Update and, where applicable, the Water Plan Update as specified in the GC Scope of Work issued by the CWCB. The work will be completed by Brown and Caldwell (BC), the General Contractor selected in November 2019 by the CWCB to support this project, and will be supported by a LE in each basin who will help complete the core duties of that effort. A first priority will be updating each basin's project lists, including enhanced data collection for each project listed.

Additional Background from the Arkansas Basin

The Arkansas Basin is the largest and the most heterogeneous basin in the State; its nineteen counties and their people represent the State's extremes in income, wealth, racial diversity, elevation, topography, water availability and water supply uses.

The Arkansas Basin Roundtable ("Roundtable" or "ABRT") recognizes and supports the data-driven planning conducted by the CWCB. The Roundtable also believes that an approach to updating their BIP that is overly generic from a statewide perspective may not be valuable to the ABRT. The ABRT

would like to maximize the value of the BIP in ways that honor the values and priorities of the local perspective. Our current water supply needs and future gaps revolve around the diverse people we represent: the residents in those counties. To this point, it is critically important to identify gaps and projects which provide value and support to our most underserved rural residents, recognizing that our more resourced stakeholders' needs are mostly already known. And there are some, but few, truly basin-wide projects in this basin, but these are, however, of great importance.

Pursuant to its organic legislation and the executive order authorizing the Colorado Water Plan, the ABRT embraces (1) a bottom-up approach to water resources planning and (2) faces the very real needs of our overwhelming majority of rural counties.

The “gaps” most important to its Roundtable members are the local gaps within the jurisdictions and various user groups they represent. As a result, ABRT planning first identifies local gaps and then integrates them as components of a basin wide gap. Having done so, the Roundtable identifies and supports funding to meet those local gaps. The ABRT recognizes that through incorporating our local and basin needs and projects into a consistent statewide database and plan, we have the best opportunity to secure state funding to meet our identified needs.

Furthermore, the gaps within our basin include more than water supply needs; they include water infrastructure (including storage capacity as well as diversion, distribution, and treatment facilities), watershed protection, water quality, and alternative transfer methods/ water sharing – all consistent with Colorado’s prior appropriation doctrine.

The ABRT presently maintains one Master Needs List (MNL) of projects from all counties, only some of which have been identified as Identified Projects and Processes (IPPs). The MNL includes some projects which have gone stale and currently cannot be easily updated to include new projects. Many of our counties will require individual assistance from the Local Expert in evaluating existing listed projects, identifying new projects to be listed, and quantifying project data for IPPs.

CORE DUTIES:

The LE will serve as the primary liaison among the roundtable, the GC and the CWCB. It is anticipated that the local expert will conduct the following core duties, which may require 90% of their budget. Note that the core duties may be altered in specific basins depending on available budget and the division of labor between the LE and GC as described in the BIP Update Work Plan (to be developed early in the project).

- **Facilitate and provide local leadership for the BIP update.** The LE will be the primary liaison and point-of-contact for their basin roundtable during the process of updating the BIP. The LE will provide updates on progress to basin roundtables and to the GC. The LE will, at a local level, lead and conduct processes for updating project lists, developing the updated BIP, and the other core duties listed in this section.
- **Communicate with the GC:** Frequent communications with the GC via email and telephone will be required to ensure that efforts are coordinated and that the GC is aware of LE activities and requests of the LE made by the basin roundtable and that the LE is aware of overall project direction, project issues, and CWCB activities related to BIP updates.
- **Update the BIP project lists.** Developing updated project lists is a high priority for basin roundtables and the CWCB. Updated project lists will be developed by August 2020. In addition, the LE will collaborate with the GC on use of the Costing Tool and the Prioritization Matrix.
 - More information on the Costing Tool can be found with documentation associated with the Technical Update at the following link:

<https://www.colorado.gov/pacific/cowaterplan/data-repository>

- More information on the Prioritization Matrix can be found with documentation of the Implementation Working Group at the following link:
<https://www.colorado.gov/pacific/cowaterplan/2019-implementation-working-group>
- **Create a BIP Update Work Plan.** The Work Plan will describe processes and analyses for developing the required content for their BIP, desired basin-specific studies, issues identified by the BRTs, and specific work activities that will be carried out by the LE and the GC. It is anticipated that the BIP Update Work Plan will be developed in 2020 and will more precisely describe the scope of services to be conducted by the LE through the remainder of the project.
- **Perform administrative functions for the roundtable.** It is anticipated that basin roundtable chairs or roundtable subcommittees may have administrative tasks such as local meeting scheduling and logistics, note taking, and maintenance of data files that will require assistance from the LE.
- **Identify and integrate goals and findings from relevant state and local planning efforts.** The updated BIP and strategy document should consider, reference, or integrate (to an appropriate degree) relevant state and local planning efforts such as stream management plans, watershed health studies, forest management studies, climate change studies, and other activities being conducted via separate efforts by the CWCB and basin roundtables in accordance with CWCB board direction.
- **Participate in four collaboration workshops.** Collaboration workshops will be held with other LEs, the GC, and CWCB. Workshops will focus on topics such as educating LEs on the use of Technical Update tools and data sets, sharing information on BIP updates in each basin, and collaborating on cross-basin studies. The first workshop is anticipated to potentially be three days in length and is targeted for late April or early May 2020.
- **Facilitate basin roundtable discussions.** Basin roundtables will need to be engaged in discussions related to gathering information and carrying out the core duties described above. In addition, basin roundtables will be engaged in developing strategies for meeting gaps, gathering input on planning scenarios and ideas for improvement, use of the Flow Tool, evaluating environmental and recreational needs, considerations on consumptive use from urbanization of irrigated lands and changes in transmountain imports, and BIP goals. Metrics for monitoring and tracking drivers of water supply and demand conditions should also be part of the BIP updates.
- **Identify necessary technical and modeling analyses.** Technical and modeling analyses to support the BIP update and BIP goals will be identified by the LE.
- **Update the BIP.** The LE will update and consolidate BIP content that is considered to be “evergreen” or basin summary material that would not be the subject of future updates. The GC, in coordination with LEs will develop a general template for the BIP Updates, and the LEs will use the template to complete the updated BIPs.
- **Support the development of a shorter BIP strategy summary.** It is anticipated that the GC will lead this effort (to facilitate uniformity among the basins) but will work with the LEs to provide content and review of the BIP strategy summary. The BIP strategy summary will serve as Volume 1 of the overall updated BIP.
- **Facilitate roundtable and public review of the draft updated BIP.** The LE will be the point-of-contact and will lead the review processes for the draft, updated BIP. It is anticipated that this will include review by the roundtable and then review by the public.

ADDITIONAL DUTIES:

Additional duties may be required by the LE depending on the capabilities of the LE, the BIP update activities identified in the Work Plan, and ongoing collaboration among the GC, CWCB, and LEs in other basins (per the collaboration workshops). Potential additional duties may include the following

(note that the GC could potentially also provide these services depending on LE capabilities and the desires of the roundtable).

- **Additional data gathering:** Additional data on topics such as future industrial water demands and municipal water usage would be useful in some basins for improving Technical Update data sets. Additional data may be gathered by the LE depending on the need and available budget.
- **Technical and modeling analyses.** Technical and modeling analyses identified in the context of core duties may be conducted by the LE depending on LE capabilities and available budget. For example, LEs may conduct modeling analyses of future water projects that could help meet gaps under the various planning scenarios described in the Water Plan. Technical analyses and modeling would be conducted in close coordination with the GC and their modeling experts.
- **Cross-basin analyses and special studies.** LEs may participate in cross-basin analyses focused on topics such as watershed health or special studies focused on topics such as economic analyses of potential future gaps depending on basin needs/interests and available budget.

Additional Duties Specific to the Arkansas Basin Roundtable:

The ABRT has identified a variety of additional duties that may be incorporated into the Local Expert's duties described above. The Local Expert should be capable of performing these duties, but the actual performance of these duties in the BIP Update will be subject to budget and schedule limitations (in light of conducting the core duties) and basin roundtable priorities.

Master Needs and IPP lists:

1. Review and, with the input of Roundtable members and the approval of the Roundtable's Executive Committee
 - i. Revise the Master Needs List from the 2015 BIP to eliminate stale projects.
 - ii. From the revised MNL, generate two tentative lists – an IPP List (IPPL) for qualifying more developed projects (or those proposed for qualification) and a Master Needs List (MNL) for all other projects and needs.
2. Assist Roundtable members in the identification and submission of needed new projects within the jurisdictions they represent for the MNL or IPPL.
3. Assist the Roundtable Members in developing the information required for projects sought to be designated as an IPP, particularly the projects' capacity, cost, and yield.
4. Assist the Roundtable Executive Committee and Roundtable in selecting and prioritizing projects as IPPs, using the CWCB's Update Report Form and, at least initially, the Project Tier Matrix from the CWCB Technical Update.
5. Collate the results from items 1-4, above, into draft final MNL and IPPL and submit the lists for approval to the Executive Committee of the Roundtable and, as the committee may determine, to the Roundtable.

Gap - Municipal:

1. From each major municipal-type provider, obtain its quantification of its own "gap," regardless of the conclusions of the Technical Update.
2. From every other municipal-type provider, assist their Roundtable representative and/or local officials in developing an appropriate gap, which may be a simple confirmation of the gap identified in the Technical Update after review of the assumption made in that document.

Gap – Agricultural

1. Assist the Roundtable in addressing how the Technical Update presents current and future (“incremental”) ag gaps in dry, normal, and wet years and identify projects and processes to best meet current and future agricultural water supply needs.
2. Assist the Roundtable in addressing the importance of the agricultural use of water – its contribution to the basin economy, or the economic cost of not meeting the agricultural gap, or both.
3. Assist the Roundtable in determining the consolidated agricultural gap, and identify critical local agricultural gaps within the basin, either by county or ditch system.

Gap – Environmental and Recreational:

1. Assist the ABRT’s Environment and Recreation Committee (E&RC) in its continuing assessment of recreational and environmental attributes and water supply needs in selected HUC-12 watersheds and related stream reaches.
2. Assist the E&RC in evaluating existing environmental and recreational projects sponsored by other State and Federal agencies on the MNL.
3. Assist the E&RC in developing an updated list of recommended projects for inclusion on the MNL or IPL and a process for identifying future needs and projects (the Flow Tool developed in the Technical Update is currently of limited value in the respect within the Arkansas Basin, so an alternative approach may be necessary).

Gap – Storage

1. Assist the Roundtable in determining whether it has met its 2015 goal of increasing storage capacity in the basin by 70,000 a.f.
2. Assist the Roundtable in developing new and innovative storage solutions that can use current conditions to create fully usable storage for long-term projects and their inclusion in the MNL or IPL.
3. Assist the Roundtable in identifying and including on the MNL or IPL opportunities for underground storage or full utilization of current storage facilities without the need for extensive new construction.
4. Assist the Roundtable in establishing a storage goal for the BIP update.

Gap - Watershed Protection:

1. Identify needed pre-fire watershed assessments providing local governments with information allowing them to take precautionary measures to protect watersheds within their jurisdiction.
2. Identify needed post-fire watershed restoration projects addressing reclamation of watersheds containing hydrophobic soils and proposing flood-mitigation measures protecting downstream cultural features (particularly water infrastructure) as well as human life and safety.

Gap - Alternative Transfer Methods and Water Sharing:

1. Support local jurisdictions and affected stakeholders and the Roundtable in planning the use of current water sharing agreements and the identification of future water sharing agreements to help meet both municipal and agricultural gaps.
 - Water-sharing agreements should link municipal and agricultural uses in single projects.
 - Projects should be economic drivers for rural communities while balancing other values of preserving our agricultural water supply.

Gap - Water Quality:

1. Assist the Roundtable and its constituents to identify projects addressing water quality problems, particularly in the lower Arkansas Basin.
 - Projects should appropriately address water quality impacts on aquatic life as well as water use for industrial, agricultural, domestic, recreational and environmental purposes resulting from increased pollutant concentrations.
 - Projects should distinguish between potential changes in pollutant concentrations and loads resulting from point source discharges and nonpoint source contributions, reduced river flows and different water supply operations, and natural processes.

Gap - Infrastructure:

1. Assist the Roundtable in identifying municipal and irrigation systems, or other water infrastructure, that need to be replaced, upgraded or developed to provide full delivery of legally available water.
2. Assist the Roundtable in identifying infrastructure needs for completion of identified basin-wide projects.
3. Support municipal and agricultural users in evaluating and complying with relevant compacts, statutes, and regulations when upgrading their facilities or infrastructure, instituting water savings or conservation measures, or establishing service areas.

Basin-Wide Gap:

1. Quantify the foregoing gaps for each subject matter, by county, and
2. Consolidate the county gaps into one basin-wide gap for each subject matter.

Point of Contact:

1. Attend meetings and workshops of the Roundtable, Executive Committee, E&RC, the Arkansas River Watershed Collaborative and other committees of the Roundtable as requested to streamline information gathering of needs, projects, and related efforts.
2. Be in frequent and timely communication with the Roundtable's designated Point of Contact (POC) for the BIP update, who will be authorized to speak for the Roundtable between meetings of the Executive Committee. Unless the LE is advised otherwise, the POC is the Roundtable Chair.
3. Insure that the POC is contemporaneously advised of all task orders requested from or issued by BC as well performance of core duties such as the formulation of the BIP Update Work Plan, communications with the GC, collaboration workshops, and the BIP strategy summary.

4. Report to the POC regarding all kickoff workshops and confer with the POC regarding the workshops' effect on the LE's additional duties.

LE CHARACTERISTICS:

It is anticipated that the LE will need to possess a variety of characteristics and skills to successfully carry out the work. Potential desired characteristics of the LE are broken into general categories and described below. The percentages below generally describe the relative makeup of different characteristics and skills that the basin roundtable would like the LE to possess.

Project Management and Technical Skills (40%)

- Proficient in reading, interpreting, translating and presenting technical materials.
- Strong writer with proven ability to draft reports.
- Excellent track record for meeting deadlines and successfully completing work tasks.
- Ability to operate under uncertainty and drive timelines.
- Conversant with laws and regulations affecting water rights and water quality.
- Conversant with the provisions and requirements of the Arkansas River Compact.
- Conversant with agricultural economics.

Communication and Facilitation (33%)

- Can easily convey materials and decisions in public presentations.
- Provides solution-oriented collaboration across teams (GC, CWCB and roundtables).
- Facilitates discussions and decision-making in groups who may have diverging views.
- Coordinates conversations between internal and external stakeholders to identify opportunities for improvement and areas where value can be added.
- Tackles areas of potential conflict and finds workable solutions.
- Able to engage and establish rapport with ABRT representatives and local leaders from all walks of life.

Local Expertise (25%)

- Has a specific knowledge of the basin, basin water needs, and the BIP.
- Understands or is able to understand basin and sub-basin issues that need to be represented in the BIP update.
- Understands local needs, priorities and focus areas for the basin.
- Preferably reside and office in the Arkansas Basin.

Other Duties (2%)

- Other unanticipated duties may be requested of the LE, and the LE should be skillful in change management; cognizant of implications to scope, schedule, and budget; and diligent in working with the GC to evaluate how and whether unanticipated or other duties can be accommodated.

INITIAL WORK TASKS AND OVERALL CONTRACTING STRATEGY:

The precise and full Scope of Services needed by the LE is currently unknown. However, through the development of the BIP Update Work Plan, it is anticipated that the full Scope of Services (limited by schedule and available budget) will come into focus. As a result, BC will subcontract with LEs using a

professional services contract against which Task Orders will be issued. It is anticipated that an initial Task Order will be issued that will include:

- Participation in kickoff workshops
- Evaluation of and updates to BIP project lists
- Development of the BIP Update Work Plan

Subsequent Task Orders (one or two) would be issued to cover the rest of the core services once the BIP Update Work Plan is developed.

Attachment: Sample Subcontract



INCLUDE ON ALL INVOICES TO PREVENT DELAY OF PAYMENT:
 Subcontract/P.O. # [Click here to enter text.](#)
 Project No. [Click here to enter text.](#)
 Vendor # [Click here to enter text.](#)

Project-Specific Subcontract for Professional Services with Task Orders

Project Name: [Click here to enter text.](#) (“Project”)
Client: [Click here to enter text.](#) (“Client” or “Prime Agreement”)
Owner: Same as Client or [Click here to enter text.](#) (“Owner”)

Check here if services are for a confidential project and Client confidentiality requirements are made a part of this Subcontract.

Subcontractor Information (“Subcontractor” herein):

Subcontractor Company Name: [Click here to enter text.](#)
Address: [Click here to enter text.](#)
Contact Name: [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)
Phone: [Click here to enter text.](#) **Fax:** [Click here to enter text.](#) **Federal Tax ID:** [Click here to enter text.](#)

Valid Minority Certification (check all that apply and attach current certificate)

- DBE HUB MBE SBE SDB SMBE SMDBE SWBE VOE W WBE WDBE OTHER

Brown and Caldwell Entity Information (“Brown and Caldwell” herein):

Brown and Caldwell Entity (match to Prime Contract): [Choose an item.](#)
Hiring Office Address: [Click here to enter text.](#)
Contact Name: [Click here to enter text.](#) **E-mail:** [Click here to enter text.](#)
Phone: [Click here to enter text.](#) **Fax:** [Click here to enter text.](#)
Effective Date “Effective Date”: [Click here to enter a date.](#)

Brown and Caldwell and Subcontractor agree that Subcontractor will perform the professional services as described in separate written Task Order Authorizations (“Task Orders”) signed by Brown and Caldwell and Subcontractor pursuant to and referencing this Project-Specific Subcontract with Task Orders (“Scope of Services” or “Services”). Subcontractor agrees to perform the Scope of Services in accordance with the Terms and Conditions stated herein, together with any Brown and Caldwell appendices, attachments, exhibits or schedules.

Type of Ongoing Professional Services (Check all applicable boxes):

- | | | |
|--|------------------------------------|---|
| <input type="checkbox"/> Engineering | <input type="checkbox"/> Surveying | *Requires prequalification within the last three years |
| <input type="checkbox"/> Architecture | <input type="checkbox"/> Land | <input type="checkbox"/> *Geotechnical/Geophysical |
| <input type="checkbox"/> Design (CAD) | <input type="checkbox"/> Aerial | <input type="checkbox"/> *Utility Locating |
| <input type="checkbox"/> Inspection Services | <input type="checkbox"/> Marine | <input type="checkbox"/> *Services including confined space entry |

Date of Existing Prequal: [Click here to enter a date.](#)



Other (e.g. construction management; permitting services):

[Click here to enter text.](#)

Subcontractor is not authorized to provide services outside of the Task Order Authorization, nor is Brown and Caldwell responsible for any costs incurred outside the Task Order Authorization, unless modified in writing through an amended or further Task Order Authorizations. In the event Brown and Caldwell authorizes work to be done prior to the issuance of a written Task Order, any services performed by Subcontractor for Brown and Caldwell will be presumed to have been done under the Terms and Conditions of this Subcontract.

Time of Completion: The time for completion of work shall be as identified in each Task Order issued pursuant to this Subcontract. Time is of the essence in any such Task Order issued hereunder.

Compensation: Compensation will be detailed in each Task Order in accordance with Paragraph 1, Payment Terms, in Section I in the attached Terms and Conditions.

Attachments – Additional Contract Documents

- Terms and Conditions for Ongoing Professional Services
- Minimum Insurance Coverage and Limits
- Appendix A – Prime Agreement Flowdown Provisions
- Appendix B – Subcontractor Certificate Attachments and Minority Certifications, if applicable
- Approved Modifications to Subcontract Terms and Conditions (check if applicable and include Brown and Caldwell “Subcontract Addendum” as an attachment to this Subcontract)

This Project-Specific Subcontract for Ongoing Professional Services with Task Orders, incorporating the above Attachments and Additional Contract Documents, is hereby executed by duly authorized representatives of the parties.

SUBCONTRACTOR

BROWN AND CALDWELL

By: _____

By: _____

Printed Name: [Click here to enter text.](#)

Printed Name: [Click here to enter text.](#)

Title: [Click here to enter text.](#)

Title: [Click here to enter text.](#)

Date: [Click here to enter text.](#)

Date: [Click here to enter a date.](#)

Contractor’s License Information, if applicable:

Type: [Click here to enter text.](#)

Number: [Click here to enter text.](#)

Expiration Date: [Click here to enter a date.](#)

File Location: [Click here to enter text.](#)



**SECTION I
GENERAL TERMS AND CONDITIONS****1. PAYMENT TERMS**

Brown and Caldwell agrees to pay, and Subcontractor agrees to accept compensation in accordance with this Subcontract and any individual Task Order to which these terms are a part. By the 15th of each month, Subcontractor shall submit an invoice for work completed during the preceding month. The amount of Subcontractor's invoice shall be included in Brown and Caldwell's next invoice to Client. Payment to Subcontractor shall be made within ten (10) days of Brown and Caldwell's receipt of payment from Client for Subcontractor's work. Subcontractor shall reference the Brown and Caldwell Purchase Order number on all invoices and correspondence. Invoices submitted with no Purchase Order number may be returned and/or payment to Subcontractor be delayed.

Brown and Caldwell may delay or withhold payment from Subcontractor for any of the following reasons: (1) failure to provide complete certificates of insurance as required in the Insurance table in this Subcontract and as noted in the individual Task Order; (2) defective work not remedied; (3) backcharges, damage to other contractors or Client; (4) failure to properly make payment to its employees, subcontractors and suppliers; (5) lack of required invoice support (e.g. lien releases, if required); or for any reason permitted by law or equity. When such conditions are remedied, payment will be made for the amounts withheld.

2. CONFIDENTIALITY

Subcontractor agrees that this Subcontract and the work performed hereunder shall be confidential. Subcontractor's personnel shall not disclose any information to any party other than Brown and Caldwell or individuals designated by Brown and Caldwell concerning the site or Project, including the nature or results of the work performed, and shall direct all comments or questions to Brown and Caldwell or Brown and Caldwell's designated representative. Subcontractor agrees to comply with Client's confidentiality requirements, if any.

In the event Subcontractor is compelled by subpoena, court order, or administrative order ("Order") to disclose any confidential information, Subcontractor shall promptly notify Brown and Caldwell and shall cooperate with Brown and Caldwell prior to disclosure so that Brown and Caldwell and/or its Client may take necessary actions to protect such confidential information from disclosure.

3. PRIME AGREEMENT

Those obligations Brown and Caldwell has assumed to the Client under the Prime Agreement, which are applicable to the Subcontractor's Scope of Services herein, shall in turn be assumed by the Subcontractor to Brown and Caldwell.

4. CHANGES AND EXTRA WORK

Subcontractor shall not commence any changed work until directed to do so in writing; upon which direction Subcontractor shall expeditiously perform the extra work. If such change involves extra cost or extra time to Subcontractor, or adversely affects its work, Subcontractor shall promptly advise Brown and Caldwell in writing. Advisement shall include an estimate of the effect of the change in time and cost, and shall be submitted prior to beginning the work or no later than five working days after the change and/or extra work is ordered, whichever is later.

5. HEALTH AND SAFETY

Subcontractor has full responsibility for safety of its employees and agents, including providing appropriate safety equipment for its field personnel. In performance of the work, Subcontractor shall: (a) comply with all applicable federal, state and local statutes, regulations and ordinances regarding health and safety, including, but not limited to OSHA 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response, Interim Final Rule, U.S. Department of Labor, Occupational Safety and Health Administration, December 1986 (if applicable to Subcontractor's work); (b) prepare and comply with its own Health and Safety Plan, as well as any Health and Safety Plan prepared by Brown and Caldwell for the site; and (c) comply with any applicable safety requirements established by Client for the site.

Subcontractor shall indemnify, defend and hold Brown and Caldwell and its Client harmless from all claims, damages, suits, losses and expenses, including attorneys' fees, in any way arising from noncompliance by Subcontractor, its employees, agents and lower-tier subcontractors with all applicable health and safety requirements.

6. JOBSITE CONDITIONS

Brown and Caldwell shall furnish or make available to Subcontractor such documents and information made available to Brown and Caldwell by Client that relate to the identity, location, quantity, nature, or characteristics of any hazardous materials at, on, or under the site. Brown and Caldwell, however, assumes no responsibility or liability for the accuracy or completeness of such documents and information, and all such documents and information shall remain the property of Client.

7. INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor, and is responsible for the means and methods of carrying out the Scope of Services and for the safety of its employees and agents. Brown and Caldwell retains the right to require that the Services provided by Subcontractor meet specific standards without regard to the manner and means of accomplishment thereof. Except as agreed to in writing by Brown and Caldwell, Subcontractor shall not subcontract the performance of any Services to lower-tier subcontractors.

**8. COMPLIANCE WITH THE LAW AND EEOC
REGULATIONS**

In performance hereunder, and every activity conducted therewith, Subcontractor shall comply fully with all applicable laws, ordinances, prevailing wage requirements, rules and regulations, and when requested, shall furnish evidence satisfactory to Brown and Caldwell of such compliance. For Federal projects, Subcontractor shall comply with all applicable FAR clauses. Where applicable, Subcontractor shall comply with the current provisions of the Equal Opportunity Clause at 41 CFR § 60-1.4(a), 41 CFR § 60-300.5(a) , (41 CFR § 60-250.5 (a), and 41 CFR § 60-741.5 (a) which are hereby incorporated by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

9. LIEN WAIVER

Subcontractor will promptly pay for all services, labor, materials, and equipment used or employed by Subcontractor in the Scope of Services, and will maintain all materials, equipment, structures, buildings, and premises free and clear of mechanic’s or other liens. Subcontractor will furnish Brown and Caldwell with lien waivers and releases or other reasonable evidence that all services, labor, materials, and equipment have been paid in full.

10. ASSIGNMENT AND LOWER-TIER SUBCONTRACTOR APPROVAL

The Subcontractor may not assign this Subcontract without the prior written consent of Brown and Caldwell.

If the authorized Services include construction activities or the oversight of construction, Brown and Caldwell may, at its discretion and upon notice to Subcontractor, assign all of its contractual rights and obligations with respect to such activities or services to Brown and Caldwell Constructors, its wholly owned affiliate. If the authorized Services require professional services to be performed in a jurisdiction in which Brown and Caldwell renders professional services solely through a locally registered engineering affiliate for purposes of compliance with professional licensing requirements in that jurisdiction, Brown and Caldwell may, at its discretion, upon notice to Subcontractor, assign its contractual rights and obligations with respect to such services to such locally registered engineering affiliate.

11. TERMINATION

a) **TERMINATION FOR CONVENIENCE** Brown and Caldwell may terminate all or part of this Subcontract for its convenience. In such event, Subcontractor shall be compensated for reasonable Services competently performed up to the date of termination, and reasonable termination expenses as determined

at the discretion of Brown and Caldwell. Subcontractor will not be entitled to compensation for profit on Services not performed.

b) **TERMINATION FOR DEFAULT** If Subcontractor persistently fails to provide the Services in a manner satisfactory to Brown and Caldwell or, if Subcontractor otherwise materially breaches this Subcontract, then Brown and Caldwell may, by written notice, terminate this Subcontract if Subcontractor fails to cure or correct the default within a period of ten (10) working days from the notice of noncompliance and threatened termination. Subcontractor will not be entitled to termination expenses. If, following termination, Brown and Caldwell must complete the Services; Subcontractor shall be liable to Brown and Caldwell for any additional costs and expenses thereby incurred.

12. DISPUTES

Subcontractor agrees that in the event of any dispute between the parties, and if it is feasible under the terms of this Subcontract, each party shall continue to perform the obligations required of it that are not related to the dispute during resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

Brown and Caldwell and Subcontractor may pursue their respective remedies at law or equity for any claims, controversy or dispute relating to this Subcontract, except as follows: Subcontractor acknowledges that the Prime Agreement may include a disputes resolution clause pursuant to which Brown and Caldwell may be limited to certain dispute resolution procedures (such as arbitration or administrative proceedings) in the event of a dispute relating to the Prime Agreement. With respect to disputes between Brown and Caldwell and Client which relate in any way to this Subcontract, Subcontractor and Brown and Caldwell agree to be bound by the dispute resolution procedures in the Prime Agreement in the same manner that Brown and Caldwell is bound under the Prime Agreement. Subcontractor consents to joinder in any proceedings between Brown and Caldwell and Client upon the request of Brown and Caldwell. Subcontractor shall not have the right to join in proceedings between Brown and Caldwell and Client unless Brown and Caldwell consents to the joinder.

13. SCHEDULE AND DELAYS

Subcontractor shall advise Brown and Caldwell in writing within three (3) working days after experiencing a delay, and thereafter continue to advise Brown and Caldwell concerning such a delay. Without limitation, Subcontractor shall not be excused from delay due to any act or omission of Subcontractor or which is normally incidental to the work.

14. RECORDS AND AUDITING

Subcontractor shall maintain all documents and records relating to charges for Services performed under this Subcontract for a minimum period of three (3) years, or



for any longer period required by law, from the date of termination or completion of the applicable Task Order. Records shall be made available for inspection or audit, at any time during regular business hours, upon written request by Brown and Caldwell.

15. JURISDICTION / CHOICE OF LAW

This Subcontract and any Task Orders hereunder shall be administered and interpreted under the laws of the state in which the Project is located. Jurisdiction and venue of litigation arising from the Subcontract and any Task Orders shall be in that state.

16. SEVERABILITY

If any of the provisions of this Subcontract are held invalid or unenforceable under applicable law, the enforceability of the other remaining provisions shall not be impaired.

17. NOTICES

Any notice, request, instruction or other document to be given hereunder by Subcontractor to Brown and Caldwell shall be in writing and delivered by first class mail, postage prepaid, or by personal delivery to the address of the hiring office on the cover page to this Subcontract.

18. ENTIRE AGREEMENT

This Subcontract represents the entire understanding of the parties as to the subject matter of this Subcontract. No prior oral or written understanding shall be of any force or effect with respect to those matters. No terms and conditions on Subcontractor’s invoices, proposals, Scope of Services or any other documentation shall modify or change in any way the terms and conditions agreed to in this Subcontract; any such terms and conditions inconsistent with the terms and conditions herein shall be deemed null and void. This Subcontract may not be modified except by a Subcontract Addendum or Amendment in writing, signed by both parties.

**SECTION II
SPECIFIC TERMS AND CONDITIONS**

19. INDEMNIFICATION

To the fullest extent permitted by law, Subcontractor shall indemnify, defend and hold harmless Client, Owner, Brown and Caldwell, their officers, directors, agents, and employees ("Indemnitees") from and against all claims, damages, losses and expenses (including attorneys' fees and other legal expenses) arising out of, or in connection with any negligent act or omission, willful misconduct or breach of contract by Subcontractor, its employees, or others for whom Subcontractor may be legally liable.

In any claims against Indemnitees by any employee of Subcontractor, this indemnification shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Subcontractor also agrees to indemnify, defend and hold harmless Brown and Caldwell to the same extent Brown and Caldwell is required to indemnify, defend and hold harmless any party, pursuant to provisions of the Prime Agreement.

20. OWNERSHIP OF DOCUMENTS, PATENTS AND COPYRIGHTS

Subcontractor shall deliver to Brown and Caldwell five (5) copies of reports, specifications and drawings prepared under the terms of this Subcontract. If drawings are prepared, Brown and Caldwell shall be provided with original hard copies, as well as electronic files if they were produced, which shall remain the sole property of Brown and Caldwell. Originals of design and study notes, calculations, correspondence, and similar material shall be maintained by Subcontractor and made available to Brown and Caldwell on request. With respect to documents related to work performed under the terms of this Subcontract, Subcontractor agrees not to assert any rights, and not to establish any claim under patent or copyright law. Subcontractor shall have the right to retain copies of its work product for record purposes.

For surveying services: Subcontractor shall deliver to Brown and Caldwell the copies of documents and survey drawings specifically described in the Scope of Services to this Subcontract, and individual Task Orders. If survey drawings are prepared, Brown and Caldwell shall be provided with hard copy survey drawings with the Subcontractor’s embossed seal and signature. Such original drawings shall remain the sole property of Brown and Caldwell. If requested in the Scope of Services, deliverables shall also include the final electronic survey and photocopies of all final data used to complete the survey. With respect to documents related to work performed under the terms of this Subcontract, Subcontractor agrees not to assert any rights, and not to establish any claim under patent or copyright law. Survey drawings and documentation of records shall be maintained by Subcontractor and made available to Brown and Caldwell on request. Subcontractor shall have the right to retain copies of its work product solely for record purposes

21. STANDARD OF CARE

Subcontractor shall perform its Services with the standard of care, diligence and skill ordinarily exercised by firms providing similar services and in accordance with accepted practices and procedures.

22. UTILITY LOCATING (NOT applicable to Engineering/Architecture/Design (CAD))

Unless otherwise expressly set forth in the Subcontractor’s Scope of Services, Subcontractor will contact the utility clearing house (e.g., Dig Alert) and/or an appropriate utility locating service to mark the location for drilling and other sub-surface work.

Any information provided by Brown and Caldwell regarding location of underground utilities or obstacles is approximate. It shall be the Subcontractor’s responsibility



to confirm clearance within the time limits locally applicable so that any subsurface activities (drilling, excavation, etc.) can be conducted safely. Subcontractor will not proceed with subsurface activities until clear delineation has been made by the utility locating service and any other identified authorities.

It is the Subcontractor's responsibility to commence subsurface work with extreme care using hand excavation or digging as appropriate and to take all necessary precautions to avoid damage to underground or overhead utilities or obstacles. When using hand excavation methods, Subcontractor shall exercise care by clearing a hole to the same diameter as the diameter of the drill bit.

In the event of ambiguous or inadequate information concerning the location of suspected underground utilities or obstacles, the Subcontractor shall notify Brown and Caldwell in writing and receive direction from Brown and Caldwell before hand excavation, digging or drilling activities proceed.

23. INSURANCE REQUIREMENTS

Insurance requirements for the Subcontractor are specified in the Professional Services Insurance Requirements table included herein. To the extent higher limits or additional insurance requirements are specified in the Prime Agreement, such insurance requirements shall flow down to Subcontractor unless formally waived in writing by Brown and Caldwell or its Client.

SECTION III SPECIAL TERMS

24. CAD SERVICES

If applicable to Subcontractor's Services, Brown and Caldwell will issue a project-specific drafting plan ("Project CAD Plan") to define the CAD standard and drafting practices for the project. The Project CAD Plan will be issued prior to the start of the detailed design phase. Drawings shall be prepared in accordance with this plan. A project CAD coordinator shall review all project drawing files for compliance to the standard. The Subcontractor shall correct drawings not meeting this standard at no additional cost to Brown and Caldwell. Submission of drawings not meeting these requirements or standard may result in rejection of drawing and withholding of payment until the products meet the standard. The Project CAD Plan will define which elements are to reside on which base drawings. Brown and Caldwell will maintain and issue the base drawings to all disciplines in a timely manner.

25. INDEMNIFICATION – Washington State Only:

Subcontractor expressly waives its immunity under Industrial Insurance, Title 51, RCW, but only as to the Indemnitees and not as to any other party.

BROWN AND CALDWELL PROFESSIONAL SERVICES INSURANCE REQUIREMENTS MINIMUM INSURANCE COVERAGE AND LIMITS*		
	Method of Coverage	Limits Not Less Than* [*UNLESS HIGHER LIMITS ARE REQUIRED BY CLIENT OR OWNER]
(1)	Commercial General Liability [REQUIRED]	\$1,000,000 per occurrence \$2,000,000 general aggregate
	(ISO Form CG0001, or its equivalent) Insurance must include premises/operations, products/completed operations, independent contractors, blanket contractual liability, broad-form property damage, personal injury and XCU (underground, explosion, and collapse) hazard coverage. <ul style="list-style-type: none"> Brown and Caldwell, its affiliates, subsidiaries, directors, officers and employees, Client, and Owner shall be named as Additional Insureds (using CG 2010 and CG 2037 or their equivalent). Additional Insured status shall continue for five (5) years following completion of service under this Subcontract for Completed Operations coverage. The policy shall be primary and noncontributory with any other insurance maintained by Brown and Caldwell. Waiver of Subrogation in favor of Brown and Caldwell is required. 	
(2)	Commercial Automobile Liability [REQUIRED]	\$1,000,000 each accident
	(ISO Form CA 0001 or its equivalent) The Automobile Liability policy shall cover owned, nonowned and hired vehicles. <ul style="list-style-type: none"> Brown and Caldwell, its affiliates, subsidiaries, directors, officers and employees, Client, and Owner shall be named as Additional Insureds The policy shall be primary to any other insurance maintained by Brown and Caldwell. Waiver of Subrogation in favor of Brown and Caldwell is required. 	
(3)	Workers' Compensation [REQUIRED]	Statutory Limits
	Insurance as required by applicable state and/or federal law (including Longshoremen's and Harbor Workers' Act and the Jones Act if applicable to subcontractor's services). <ul style="list-style-type: none"> Waiver of Subrogation in favor of Brown and Caldwell is required, where allowed by state law. 	
(4)	Employer's Liability [REQUIRED]	\$500,000 minimum per: <ul style="list-style-type: none"> Accident Disease - Each employee Disease - Policy limit
	In states with monopolistic state funds, include evidence of the "Stop Gap" endorsement to either the general liability or Employers Liability policy.	
(5)	Professional Liability [REQUIRED]	\$2,000,000 per claim and aggregate
	Insurance covering liability incurred as a result of errors and omissions in Subcontractor's performance of professional services. Claims-made policies shall be maintained by Subcontractor for five (5) years after completion of the Scope of Services. Retroactive date shall be a date prior to the provision of professional services under this Subcontract.	
(6)	Contractor's Pollution Liability	\$2,000,000 per loss / \$2,000,000 aggregate
	Required for all services involving hazardous substances, remediation or invasive/intrusive work (e.g. geotechnical, drilling/borings). For work involving asbestos, Asbestos Liability must be included (or carried as a separate policy). <ul style="list-style-type: none"> Brown and Caldwell, its affiliates, subsidiaries, directors, officers and employees, Client, and Owner shall be named as Additional Insureds. The policy shall be primary and noncontributory with any other insurance maintained by Brown and Caldwell. 	

BROWN AND CALDWELL PROFESSIONAL SERVICES INSURANCE REQUIREMENTS MINIMUM INSURANCE COVERAGE AND LIMITS*		
	Method of Coverage	Limits Not Less Than* [*UNLESS HIGHER LIMITS ARE REQUIRED BY CLIENT OR OWNER]
(7)	Aviation Liability Required if using aircraft in the provision of services, including helicopters. Coverage must not exclude war and terrorism coverage. <ul style="list-style-type: none"> Brown and Caldwell, its affiliates, subsidiaries, directors, officers and employees, Client, and Owner shall be named as Additional Insureds. The policy shall be primary and noncontributory with any other insurance maintained by Brown and Caldwell. 	Minimum \$10,000,000 per occurrence (combined bodily injury and property damage)
(8)	Marine Liability Required if using watercraft during provision of services. <u>Charterers' Liability</u> is required if vessel is chartered and vessel's operation remains in control of the vessel owner. <u>Protection and Indemnity</u> coverage shall be provided for owned vessels. (Alternatively, provide evidence that the watercraft exclusion has been removed from General Liability policy). <ul style="list-style-type: none"> Brown and Caldwell, its affiliates, subsidiaries, directors, officers and employees, Client, and Owner shall be named as Additional Insureds. The policy shall be primary and noncontributory with any other insurance maintained by Brown and Caldwell. 	Minimum \$2,000,000 per loss and in the aggregate

Limits may be met by a combination of primary and excess coverage. All policies shall be endorsed to provide Brown and Caldwell with 30 days' written notice prior to cancellation of the insurance and 10 days notice if cancelled for nonpayment of premium.

Before commencing any work under this Subcontract, Subcontractor must submit current, signed certificates of insurance with the associated endorsements pages evidencing the above required insurance policies along with this signed Subcontract to the Brown and Caldwell Contact at the local Brown and Caldwell office as follows:

- The Certificate holder address on the certificate shall show:
 - Subcontractor Vendor No:** [Click here to enter text.](#)
 - Brown and Caldwell
 - Attn: Legal Department
 - P.O. Box 8045
 - Walnut Creek, CA 94596-1220
 - E-mail:** COIRenewals@BrwnCald.com
- Subcontractor's insurance representative's e-mail address shall be shown on the certificates of insurance.
- Subcontractor's insurance broker(s) shall submit renewal certificates of insurance directly to COIRenewals@BrwnCald.com, or, if unable, by mail to the certificate holder address.
- Renewal certificates shall be continuously submitted for the term of the Subcontract, and, for Commercial General Liability, Professional Liability and any claims-made policies, for five (5) years following completion of the services provided under this Subcontract.
- Proof of required insurance is a condition to processing and payment of invoices.**

Note: If Subcontractor intends to subcontract any portion of the work, the lower-tier subcontractor shall provide evidence of above coverages prior to commencing the work, including the Additional Insured as stated.



Attachment: Prime Contract Terms and Conditions

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1. PARTIES

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

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

B. Initial Term

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

C. Extension Terms - State’s Option

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

Contract. Except as stated in **§2.D**, the total duration of this Contract, including the exercise of any options to extend, shall not exceed five years from its Effective Date absent prior approval from the Chief Procurement Officer in accordance with the Colorado Procurement Code.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of this Contract.

E. Early Termination in the Public Interest

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

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a**.

iii. Payments

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

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Breach of Contract”** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **“Business Day”** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.
- C. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- D. **“Contract”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- E. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- F. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **“End of Term Extension”** means the time period defined in §2.D.
- H. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- I. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- J. **“Extension Term”** means the time period defined in §2.C.
- K. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- L. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.

- M. **“Initial Term”** means the time period defined in §2.B.
- N. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- O. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- P. **“Services”** means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- Q. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- R. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- S. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- T. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- U. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- V. **“Work”** means the Goods delivered and Services performed pursuant to this Contract.
- W. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. **“Work Product”** does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

4. STATEMENT OF WORK

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

5. PAYMENTS TO CONTRACTOR

A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds.

B. Payment Procedures

i. Invoices and Payment

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

ii. Interest

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

iii. Payment Disputes

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

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any

subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in **§2.E**.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to **§16** or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Cover Page for this Contract.

C. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with **§14** and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date three years after the date this Contract expires or is terminated, (ii) final payment under this Contract is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

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

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

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

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

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

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective

as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

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

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

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

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

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

10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

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

B. General Liability

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

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

C. Automobile Liability

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

D. Professional Liability Insurance

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

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

E. Additional Insured

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

F. Primacy of Coverage

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

G. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

H. Subrogation Waiver

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

I. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

J. Certificates

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

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State,

in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

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

a. Obligations and Rights

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

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under §2.E.

c. Damages and Withholding

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

liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

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

a. Suspend Performance

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

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

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

d. Removal

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

e. Intellectual Property

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

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be

referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

14. NOTICES AND REPRESENTATIVES

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

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the

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

B. Exclusive Property of the State

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

C. Exclusive Property of Contractor

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

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of

Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in § 17.A, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

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

F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

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

H. Digital Signatures

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

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications

permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

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

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

K. External Terms and Conditions

i. Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

L. Severability

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

M. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract shall survive the termination or expiration of this Contract and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in § 17.A, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

T. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in

§24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

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

C. GOVERNMENTAL IMMUNITY.

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

D. INDEPENDENT CONTRACTOR.

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

E. COMPLIANCE WITH LAW.

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

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

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

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts

with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

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

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

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

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that

the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK

EXHIBIT B WAGE RATE SCHEDULE

EXHIBIT C, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00	Option Contract Number Insert CMS number or Other Contract Number of this Option Contract Performance Beginning Date Month Day, Year Current Contract Expiration Date Month Day, Year

1. **OPTIONS:**
 - A. Option to extend for an Extension Term
 - A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
2. **OPTION EFFECTIVE DATE:**
 - A. The effective date of this Option Letter is upon approval of the State Controller or his delegate.

<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Natural Resources Dan Gibbs, Executive Director Colorado Water Conservation Board</p> <p>_____</p> <p>By: Tina Heltzel, Colorado Water Conservation Board Budget Analyst</p> <p style="margin-top: 20px;">Date: _____</p>	<p style="text-align: center;">In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p style="margin-top: 40px;">By: _____</p> <p style="margin-top: 40px;">Option Effective Date: _____</p>
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