

**RESOLUTION NO. 7**

**Series of 2021**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF VAIL AND THE COLORADO DEPARTMENT OF TRANSPORTATION (“CDOT”) REGARDING THE SMART TRANSIT SYSTEM GRANT**

WHEREAS, the Town and CDOT wish to enter into an intergovernmental agreement regarding the disbursement of Multi-Modal Option Program funds in the form attached hereto as **Exhibit A**, and made a part hereof by this reference (the “IGA”).

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO THAT:

Section 1. The Town Council hereby approves the IGA in substantially the same form as attached hereto as **Exhibit A**, and in a form approved by the Town attorney, and authorizes the Town Manager to execute the IGA on behalf of the Town.

Section 2. This Resolution shall take effect immediately upon its passage.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Vail held this 2nd day of February 2021.

\_\_\_\_\_  
Dave Chapin, Town Mayor

ATTEST:

\_\_\_\_\_  
Tammy Nagel, Town Clerk

# STATE OF COLORADO GRANT AGREEMENT

## COVER PAGE

|  |  |
|--|--|
| <b>State Agency</b><br>Department of Transportation  | <b>Agreement Number/PO Number</b><br>21-HTR-ZL-00166/491002412   |
| <b>Grantee</b><br>TOWN OF VAIL   | <b>Agreement Performance Beginning Date</b><br>The Effective Date  |
|  | <b>Initial Agreement Expiration Date</b><br>May 01, 2023   |
| <b>Grant Agreement Amount</b><br>MMOF Funds Maximum Amount   | <b>Fund Expenditure End Date</b><br>May 01, 2023   |
|  | <b>Agreement Authority</b><br>Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117, 43-2-101(4)(c), 43-4-811(2), SB18-001, SB17-228 and SB17-267. |
| State Fiscal Year 2021   | \$350,000.00   |
| Local Funds  | \$350,000.00   |
| Total for all State Fiscal Years   | \$350,000.00   |
| <b>Agreement Purpose</b><br>The purpose of this Grant is for CDOT to disburse Multi-Modal Option Program Funds (MMOF) to Grantee to conduct work within the provisions of this Grant.  |  |
| <b>Exhibits and Order of Precedence</b><br>The following Exhibits and attachments are included with this Agreement:<br><ol style="list-style-type: none"> <li>1. Exhibit A, Statement of Work and Budget.</li> <li>2. Exhibit B, Sample Option Letter.</li> <li>3. Exhibit C, Title VI-Civil Rights.</li> </ol><br>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:<br><ol style="list-style-type: none"> <li>1. Exhibit C, Title VI-Civil Rights.</li> <li>2. Colorado Special Provisions in §17 of the main body of this Agreement.</li> <li>3. The provisions of the other sections of the main body of this Agreement.</li> <li>4. Exhibit A, Statement of Work and Budget.</li> <li>5. Executed Option Letters (if any).</li> </ol> |  |
| <b>Principal Representatives</b>   |  |
| For the State:<br>Brodie Ayers<br>Division of Transit and Rail<br>2829 W. Howard Place<br>Denver, CO 80204<br>brodie.ayers@state.co.us   | For Grantee:<br>Mike Rose<br>TOWN OF VAIL<br>75 SOUTH FRONTAGE ROAD W<br>VAIL, CO 81657<br>mrose@vailgov.com   |

## SIGNATURE PAGE

### THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

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

|   |  |
|---|--|
| <p style="text-align: center;"><b>GRANTEE</b><br/>TOWN OF VAIL</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p style="text-align: center;">By: Print Name of Authorized Individual</p><br><p style="text-align: center;">Date: _____</p>   | <p style="text-align: center;"><b>STATE OF COLORADO</b><br/>Jared S. Polis, Governor<br/>Department of Transportation<br/>Shoshana M. Lew, Executive Director</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p style="text-align: center;">By: David Krutsinger, Director<br/>Division of Transit and Rail</p><br><p style="text-align: center;">Date: _____</p> |
| <p style="text-align: center;">2nd State or Grantee Signature if needed</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p style="text-align: center;">By: Print Name of Authorized Individual</p><br><p style="text-align: center;">Date: _____</p>  | <p style="text-align: center;"><b>LEGAL REVIEW</b><br/>Philip J. Weiser, Attorney General</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p style="text-align: center;">By: Assistant Attorney General</p><br><p style="text-align: center;">Date: _____</p>  |
| <p style="text-align: center;">In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p style="text-align: center;"><b>STATE CONTROLLER</b><br/><b>Robert Jaros, CPA, MBA, JD</b></p> <hr style="border: 0; border-top: 1px solid black; margin: 10px auto; width: 60%;"/> <p style="text-align: center;">By: Department of Transportation</p><br><p style="text-align: center;">Effective Date: _____</p> |  |

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### 1. PARTIES

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

### 2. TERM AND EFFECTIVE DATE

#### A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Grantee for any Work performed or expense incurred before the Effective Date, except as described in §5.D, or after the Fund Expenditure End Date. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit A**.

#### B. Initial Term

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

#### C. Extension Terms - State’s Option

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

#### D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Grantee in a form substantially equivalent to the Sample Option Letter attached to this Agreement, 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 Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

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

i. Method and Content

The State shall notify Grantee 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 Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

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

iii. Payments

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

F. Grantee's Termination Under State Requirements

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

### 3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. "**Agreement**" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. "**Breach of Agreement**" means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S., at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- C. "**Budget**" means the budget for the Work described in Exhibit A.
- D. "**Business Day**" means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.
- E. "**CORA**" means the Colorado Open Records Act, §§24-72-200.1, et seq., C.R.S.
- F. "**Deliverable**" means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Grantee's Work that is intended to be delivered by Grantee.
- G. "**Effective Date**" means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.
- H. "**End of Term Extension**" means the time period defined in §2.D.

- I. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- J. **“Extension Term”** means the time period defined in §2.C.
- K. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- L. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- M. **“Grant Maximum Amount”** means an amount equal to the total of Grant Funds for this Agreement.
- N. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, et seq., C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- O. **“Initial Term”** means the time period defined in §2.B.
- P. **“Matching Funds”** (Local Funds) means the funds provided by Grantee as a match required to receive the Grant Funds.
- Q. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- R. **“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. 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.
- S. **“Services”** means the services to be performed by Grantee as set forth in this Agreement, and shall include any services to be rendered by Grantee in connection with the Goods.
- T. **“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 Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, 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.
- U. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- V. **“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.
- W. **“State Records”** means any and all State data, information, and records, regardless of physical form.
- X. **“Subcontractor”** means any third party engaged by Grantee to aid in performance of the Work. **“Subcontractor”** also includes sub-grantees of Grant Funds.
- Y. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
- Z. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and

any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

#### **4. STATEMENT OF WORK**

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

#### **5. PAYMENTS TO GRANTEE**

##### **A. Grant Maximum Amount**

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Agreement that exceeds the Grant Maximum Amount for that State Fiscal Year shown on the Cover Page of this Agreement as "MMOF Funds Maximum Amount".

##### **B. Payment Procedures**

###### **i. Invoices and Payment**

- a. The State shall pay Grantee in the amounts and in accordance with the conditions set forth in Exhibit A.
- b. Grantee shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. Any advance payment allowed under this Agreement, shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement and its Exhibits. Eligibility and submission for advance payment is subject to State approval and must include approved documentation in the form and manner set forth and approved by the State.
- d. 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 Grantee 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 Grantee shall make all changes necessary to correct that invoice.
- e. The acceptance of an invoice shall not constitute acceptance of any Work performed or Deliverables provided under this Agreement.

###### **ii. Interest**

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

###### **iii. Payment Disputes**

If Grantee disputes any calculation, determination or amount of any payment, Grantee shall notify the State in writing of its dispute within 30 days following the earlier to occur of Grantee'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 Grantee 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 Grantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant

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

C. Matching Funds

Grantee shall provide Matching Funds as provided in §5.A and Exhibit A. Grantee shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Grantee's obligation to pay all or any part of any Matching Funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee represents to the State that the amount designated "Grantee's Matching Funds" in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Grantee does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Grantee. If Grantee is a public entity, Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

D. Reimbursement of Grantee Costs

- i. Any costs incurred by Grantee prior to the Effective Date shall not be reimbursed.
- ii. The State shall reimburse Grantee's allowable costs, not exceeding the Grant Maximum Amount shown on the Cover Page of this Agreement and on Exhibit A for all allowable costs described in this Agreement and shown in Exhibit A, except that Grantee may adjust the amounts between each line item of Exhibit A without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the Grant Maximum Amount of this Agreement or the Grant Maximum Amount for any State Fiscal Year, and the change does not modify any requirements of the Work.
- iii. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:
  - a. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
  - b. Equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred.)
- iv. Grantee's costs for Work performed after the Fund Expenditure End Date shown on the Signature and Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. Grantee shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

E. Close-Out

Grantee shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement. To complete close-out, Grantee shall submit to the State all Deliverables (including documentation) as defined in this Agreement and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

**6. REPORTING - NOTIFICATION**

A. Quarterly Reports

In addition to any reports required pursuant to any other Exhibit, for any Agreement having a term longer than three months, Grantee shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted



to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

**B. Litigation Reporting**

If Grantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Grantee's ability to perform its obligations under this Agreement, Grantee 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 Agreement.

**C. Performance and Final Status**

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

**D. Violations Reporting**

Grantee shall disclose, in a timely manner, in writing to the State, all violations of State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

**7. GRANTEE RECORDS**

**A. Maintenance**

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work and the delivery of Services (including, but not limited to, the operation of programs) or Goods hereunder (collectively, the "Grantee Records"). Grantee shall maintain such records for a period of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively (the "Record Retention Period"). If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Grantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

**B. Inspection**

Grantee shall permit the State and any other duly authorized agent of the State to audit, inspect, examine, excerpt, copy and transcribe Grantee Records during the Record Retention Period. Grantee shall make Grantee Records available during normal business hours at Grantee'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 and any other duly authorized agent of the State, in its discretion, may monitor Grantee's performance of its obligations under this Agreement using procedures as determined by the State. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

**D. Final Audit Report**

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

## 8. CONFIDENTIAL INFORMATION - STATE RECORDS

### A. Confidentiality

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

### B. Other Entity Access and Nondisclosure Agreements

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

### C. Use, Security, and Retention

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

### D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, Grantee 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 Grantee can establish that Grantee, and its agents, employees, and Subcontractors are not the cause or source of the Incident, Grantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Grantee shall make all modifications as directed by the State. If Grantee cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Grantee shall reimburse the State for the reasonable costs thereof. The State may, in its sole discretion and at Grantee's sole expense, require Grantee to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Grantee shall provide the State with the results of such audit and evidence of Grantee's planned remediation in response to any negative findings.

### E. Data Protection and Handling

Grantee shall ensure that all State Records and Work Product in the possession of Grantee or any Subcontractors are protected and handled in accordance with the requirements of this Agreement, including the requirements of any Exhibits hereto, at all times. As used in this section, the protections afforded Work Product only apply to Work Product that requires confidential treatment.

### F. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S., and shall maintain security procedures and practices consistent with §§24-73-101, *et seq.*, C.R.S.

## 9. CONFLICTS OF INTEREST

### A. Actual Conflicts of Interest

Grantee 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 Grantee under this Agreement. Such a conflict of interest would arise when a Grantee or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

### B. Apparent Conflicts of Interest

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

### C. Disclosure to the State

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

### D. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S., with regard to this Agreement. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Grantee employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Grantee shall provide a disclosure statement as described in §9.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Agreement. Grantee may also be subject to such penalties as are allowed by law.

## 10. INSURANCE

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

### A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Grantee 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 1 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. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

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

E. Professional Liability Insurance

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

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

F. Crime Insurance

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

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

G. Additional Insured

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

H. Primacy of Coverage

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

I. Cancellation

All 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 Grantee and Grantee shall forward such notice to the State in accordance with §14 within 7 days of Grantee's receipt of such notice.

J. Subrogation Waiver

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

K. Public Entities

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

L. Certificates

For each insurance plan provided by Grantee under this Agreement, Grantee shall provide to the State certificates evidencing Grantee's insurance coverage required in this Agreement prior to the Effective Date. Grantee shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement prior to the Effective Date, except that, if Grantee's subcontract is not in effect as of the Effective Date, Grantee shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Grantee's execution of the subcontract. No later than 15 days before the expiration date of Grantee's or any Subcontractor's coverage, Grantee shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the

term of this Agreement, upon request by the State, Grantee 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 AGREEMENT

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

## 12. REMEDIES

### A. State's Remedies

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

#### i. Termination for Breach of Agreement

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

##### a. Obligations and Rights

To the extent specified in any termination notice, Grantee 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, Grantee shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Grantee shall assign to the State all of Grantee's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee but in which the State has an interest. At the State's request, Grantee shall return materials owned by the State in Grantee's possession at the time of any termination. Grantee 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 Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.E.

##### c. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold payment to Grantee for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee 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 Grantee's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Grantee to an adjustment in price or cost or an adjustment in the performance schedule. Grantee 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 Grantee after the suspension of performance.

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Grantee'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 Grantee's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Grantee shall, as approved by the State (i) secure that right to use such Work for the State and Grantee; (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. Grantee's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, 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 Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Grantee for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Grantee shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S., for resolution following the same resolution of controversies process as described in §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, the "Resolution Statutes"), except that if Grantee wishes to challenge any decision rendered by the Procurement Official, Grantee's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Grantee pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

**14. NOTICES and REPRESENTATIVES**

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this

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

## **15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

### **A. Work Product**

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

### **B. Exclusive Property of the State**

Except to the extent specifically provided elsewhere in this Agreement, all State Records, 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 information provided by or on behalf of the State to Grantee are the exclusive property of the State (collectively, "State Materials"). Grantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Grantee's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Grantee 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 Grantee**

Grantee retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Grantee 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 Grantee under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Grantee Property"). Grantee Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

## **16. GENERAL PROVISIONS**

### **A. Assignment**

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

### **B. Subcontracts**

Grantee shall not enter into any subgrant or subcontract in connection with its obligations under this Agreement without providing notice to the State. The State may reject any such Subcontractor, and Grantee shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any work after that Subcontractor's subcontract has been rejected by the State. Grantee shall submit to the State a copy of each such subgrant or subcontract upon request by the State. All subgrants and subcontracts entered into by Grantee in connection with this Agreement 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 Agreement.

C. Binding Effect

Except as otherwise provided in **§16.A.**, all provisions of this Agreement, 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 Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

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

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 Agreement by reference.

I. Modification

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

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

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

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Grantee'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 Agreement.

L. Severability

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

M. Survival of Certain Agreement Terms

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



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 Grantee. Grantee shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Grantee may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§16.A.**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

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

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement 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

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

S. Licenses, Permits, and Other Authorizations.

- i. Grantee shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.
- ii. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain prior to the Effective Date and maintain at all times during the term of this Agreement, at its sole expense, a certificate of authority to transact business in the State of Colorado and designate a registered agent in Colorado to accept service of process.

T. Federal Provisions

Grantee shall comply with all applicable requirements of Exhibit C at all times during the term of this Agreement.

**17. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

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

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

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee..

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

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 Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR.**

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Grantee 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.**

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

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

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

**G. PROHIBITED TERMS.**

Any term included in this Agreement that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

**H. SOFTWARE PIRACY PROHIBITION.**

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

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

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

**J. VENDOR OFFSET 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 Grantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Grantee by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Grantee, 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]* Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Grantee that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Grantee (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 Agreement is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Grantee has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (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 Grantee participates in the Department program, Grantee shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Grantee 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 Agreement for breach and, if so terminated, Grantee shall be liable for damages.

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

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Grantee (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 Agreement.

**EXHIBIT A, STATEMENT OF WORK AND BUDGET**

|   |   |                      |                     |
|---|---|----------------------|---------------------|
| <b>Project Description</b>                                      | 2021 MMOF Smart Transit Technology System     |                      |                     |
| <b>Project End Date</b>   | May 01, 2023                                  |                      |                     |
| <b>Subrecipient</b>   | Town of Vail                                  | <b>DUNS #</b>        | 075753293           |
| <b>Contact Name</b>   | Mike Rose                                     | <b>Vendor #</b>      | 2000003             |
| <b>Address</b>  | 75 South Frontage Road<br>Vail, CO 81657-5096 | <b>Phone #</b>       | 970-479-2349        |
| <b>Email</b>  | mrose@vailgov.com                             | <b>Indirect Rate</b> | N/A                 |
| <b>WBS*</b>   | 24201.10.50                                   | <b>ALI</b>           | 11.42.08            |
| <b>Total Project Budget</b>                                     |   |                      | <b>\$700,000.00</b> |
| State MMOF Funds (at 50% or less)                               |   |                      | \$350,000.00        |
| Local Funds (at 50% or more)                                    |   |                      | \$350,000.00        |
| <b>Total Project Amount Encumbered via this Grant Agreement</b> |   |                      | <b>\$350,000.00</b> |

\*The WBS numbers may be replaced without changing the amount of the grant at CDOT's discretion.

**A. Project Description**

Town of Vail shall use 2021 MMOF funds, along with local matching funds, to purchase and install Smart Transit Technology System as more fully described below. The purchase will support the goals of the Statewide Transit Plan.

| <b>Description</b>        | <b>Number of Units</b> | <b>Cost / Unit</b> | <b>Estimated Cost</b> |
|---------------------------|------------------------|--------------------|-----------------------|
| <b>Bus components</b>     |                        |                    |                       |
| Equipment                 | 33                     | \$ 16,500          | \$ 544,500            |
| Installation              | 33                     | \$ 1,000           | \$ 33,000             |
| <b>Total Bus</b>          |                        |                    | \$ 577,500            |
| <b>Signs</b>              |                        |                    |                       |
| Equipment Exterior Signs  | 24                     | \$ 2,800           | \$ 67,200             |
| Equipment Interior Signs  | 2                      | \$ 5,000           | \$ 10,000             |
| Installation              | 1                      | \$ 15,000          | \$ 15,000             |
| <b>Total Signs</b>        |                        |                    | \$ 92,200             |
| Project Management        | 1                      | \$ 30,000          | \$ 30,300             |
| <b>Total Project Cost</b> |                        |                    | <b>\$ 700,000</b>     |

Town of Vail shall use capital funds to purchase and install the following Capital Assets:

| <b>ALI</b> | <b>QTY</b> | <b>Fuel Type</b> | <b>Description</b>        | <b>MMOF Amount</b> |
|------------|------------|------------------|---------------------------|--------------------|
| 11.42.08   | 1          |                  | Smart Transit Tech System | \$350,000          |

## B. Performance Standards

### 1. Project Milestones

| Milestone Description   | Original Estimated Completion Date |
|---|------------------------------------|
| Submit Reimbursement Request in COTRAMS   | 3/1/2021                           |
| Submit Progress Reports to GU Manager   | Quarterly                          |
| Submit Final Reimbursement Request in COTRAMS   | 05/01/2023                         |
| IMPORTANT NOTE: All milestones in this Statement of Work must be completed no later than the expiration date of this Grant Agreement: <b>May 01, 2023</b> |                                    |

2. Town of Vail shall use the Capital Asset(s) purchased in its transit operations and shall perform regularly recurring maintenance with specific performance measures tied to Town of Vail's written maintenance plans, including manufacturer's recommendations and warranty program(s). Town of Vail will measure whether this project is successful and improves the efficiency, effectiveness, and safety of transportation.
3. Performance will be reviewed throughout the duration of this Grant Agreement. Town of Vail shall report to the CDOT Project Manager whenever one or more of the following occurs:
  - a. Budget or schedule changes;
  - b. Scheduled milestone or completion dates are not met;
  - c. Identification of problem areas and how the problems will be resolved; and/or
  - d. Expected impacts and the efforts to recover from delays.
4. Town of Vail must comply and submit all reimbursements and reports associated, including the assignment of "Colorado Department of Transportation" as the lienholder on the Capital Asset(s), as a condition of project closeout.
5. Progress Report. Mesa County shall submit to CDOT quarterly upon request, or more frequently if requested by CDOT, a report of progress and expenditures on the scope of the project(s) described in Section A. Progress reports shall include:
  - a. Description of project components completed
  - b. Total of all expenditures made on each project component
  - c. Total MMOF funding expended on each project component
  - d. Anticipated delivery date of remaining unfulfilled project components.

## C. Project Budget

1. The Total Project Budget is \$700,000.00. CDOT will pay no more than 80% of the eligible, actual project costs, up to the maximum amount of \$350,000.00. CDOT will retain any remaining balance of the state share of MMOF Funds. Town of Vail shall be solely responsible for all costs incurred in the project in excess of the amount paid by CDOT from MMOF Funds for the state share of eligible, actual costs. For CDOT accounting purposes, the MMOF Funds of \$350,000.00 will be encumbered for this Grant Agreement.
2. No refund or reduction of the amount of Town of Vail's share to be provided for the project will be allowed unless there is at the same time a refund or reduction of the state share of a proportionate amount.
3. Town of Vail may use eligible federal funds for the Local Funds share. Town of Vail's share, together with the State MMOF Funds share, must be enough to ensure payment of the Total Project Budget.
4. Per the terms of this Grant Agreement, CDOT shall have no obligation to provide state funds for use on this project. CDOT will administer MMOF funds for this project under the terms of this Grant Agreement, provided that the state share of MMOF funds to be administered by CDOT are made available and remain available. Town of Vail shall initiate and prosecute to completion all actions necessary to enable Town of Vail to provide its share of the Total Project Budget at or prior to the time that such funds are needed to meet the Total Project Budget.

**D. Procurement**

Procurement of this Capital Asset(s) will comply with state procurement procedures and the DTR Quick Procurement Guide. In addition to the state requirements outlined below, state procedures for purchase of this Capital Asset(s) must be followed and will be outlined prior to purchase.

1. The first step in the procurement process will be to obtain an Independent Cost Estimate (ICE).
2. The second step will be to obtain a Procurement Concurrence Request (PCR) approval from the CDOT Project Manager through COTRAMS.
3. Prior to entering into a purchasing agreement with the selected vendor, Town of Vail shall request a Purchase Authorization (PA), and submit a purchase order for the Capital Asset(s) in COTRAMS.
4. Upon delivery, Town of Vail shall be responsible for having the Capital Asset(s) inspected and accepted within **fifteen (15) calendar days of delivery**. If defects prevent acceptance of the Capital Asset(s), Town of Vail will contact the vendor to resolve any defects and notify CDOT.
5. Town of Vail shall be responsible for reimbursing the selected vendor within **forty-five (45) calendar days after acceptance** of the Capital Asset(s).

**E. Reimbursement Eligibility**

Requests for reimbursement for eligible project costs will be paid to Town of Vail upon submission of a complete reimbursement packet in COTRAMS for those eligible costs incurred during the Grant Agreement effective dates.

Accepted reimbursement packets will include the following completed documents:

- Independent Cost Estimate (ICE)
- Procurement Concurrence Request (PCR)
- Purchase Authorization (PA)
- Signed Notice of Acceptance (NA)
- Invoice
- Proof of Payment to vendor

Town of Vail must submit the final invoice by **May 1, 2023** and submit a grant closeout and Liquidation (GCL) Form in COTRAMS within Fifteen (15) calendar days of issuance of the final reimbursement payment.

**F. State Interest-Service Life**

CDOT maintains its share of the remaining state interest upon disposition of state assisted property before the end of its useful life or for a value greater than \$5,000 after the useful life has been met, according to the provisions of the State Management Plan.

The useful life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from revenue service. The minimum useful life in years refers to total time in transit revenue service, not time spent stockpiled or otherwise unavailable for regular transit use. The minimum useful life in miles refers to total miles in transit revenue service. Non-revenue miles and periods of extended removal from service do not count towards useful life. Changes in operating circumstances, including unforeseen difficulty maintaining vehicles, higher cost of fuel, and changes in local law limiting where vehicles can be operated are not exemptions from minimum useful life requirements.

Minimum useful life is determined by years of service or accumulation of miles, whichever comes first, in accordance with the State Management Plan.

Town of Vail shall not dispose or otherwise release the Capital Asset(s) to any other party while there is state interest in the Capital Asset(s) without approval from the CDOT Project Manager.

Town of Vail is responsible for making the request to the CDOT Project Manager in a timely manner, providing appropriate documentation, if indicated, when a lien release is being requested in order to allow CDOT to process the release of a lien. CDOT and Town of Vail will work in conjunction with Department of Revenue (DOR) to assure the lien is released according to state rules.

**G. Training**

In an effort to enhance transit safety, Town of Vail and any subrecipients and subcontractors shall make a good faith effort to ensure that appropriate training of agency and contracted personnel is occurring and that personnel are up to date in appropriate certifications. In particular, Town of Vail shall ensure that driving personnel are provided professional training in defensive driving and training on the handling of mobility devices and transporting older adults and individuals with disabilities.

**H. Safety Data**

Town of Vail and any subrecipients shall maintain and submit, as requested, data related to bus safety. This may include, but not be limited to, the number of vehicle accidents within certain measurement parameters set forth by CDOT, the number and extent of passenger injuries or claims, and the number and extent of employee accidents, injuries and incidents.

**I. Restrictions on Lobbying**

Town of Vail is certifying that it complies with 2 CFR 200.450 by entering into this Subaward Agreement.

**J. Special Conditions**

1. Town of Vail will comply with all requirements imposed by CDOT on Town of Vail so that the state award is used in accordance with state statutes, regulations, and the terms and conditions of the state award.
2. Town of Vail must permit CDOT and their auditors to have access to Town of Vail's records and financial statements as necessary, with reasonable advance notice.
3. Except as provided in this Grant Agreement, Town of Vail shall not be reimbursed for any purchase, issued purchase order, or leased capital equipment prior to the execution of this Grant Agreement.
4. Town of Vail shall document any loss, damage, or theft of FTA- or state-funded property, equipment, or rolling stock in COTRAMS.
5. Town of Vail shall ensure that it does not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, national origin, sex, age or disability in accordance with Title VI of the Civil Rights Act of 1964.
6. Town of Vail shall seek to ensure non-discrimination in its programs and activities by developing and maintaining a Title VI Program in accordance with the "Requirements for FTA Subrecipients" in CDOT's Title VI Program Plan and Federal Transit Administration Circular 4702.1B, "Title VI Requirements and Guidelines for FTA Recipients." The Party shall also facilitate FTA's compliance with Executive Order 12898 and DOT Order 5610.2(a) by incorporating the principles of environmental justice in planning, project development and public outreach in accordance with FTA Circular 4703.1 "Environmental Justice Policy Guidance for Federal Transit Administration Recipients."
7. Town of Vail will provide transportation services to persons with disabilities, in accordance with Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.
8. Town of Vail shall develop and maintain an ADA Program in accordance with 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services, FTA Circular 4710.1, and any additional requirements established by CDOT for FTA subrecipients.
9. Town of Vail shall ensure that it will comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FTA guidance, and any other federal, state, and/or local laws, rules and/or regulations. In any contract utilizing federal funds, land, or other federal aid, Town of Vail shall require its subrecipients and/or contractors to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.
10. Town of Vail shall agree to produce and maintain documentation that supports compliance with the Americans with Disabilities Act to CDOT upon request.

**EXHIBIT B, SAMPLE OPTION LETTER**

|   |   |
|---|---|
| <b>State Agency</b><br>Department of Transportation   | <b>Option Letter Number</b><br>Insert the Option Number (e.g. "1" for the first option)   |
| <b>Grantee</b><br>Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...   | <b>Original Agreement Number</b><br>Insert CMS number or Other Contract Number of the Original Contract   |
| <b>Current Grant Agreement Amount</b><br>MMOF Funds Maximum Amount<br>Initial Term<br>State Fiscal Year 20xx \$0.00<br>Extension Terms<br>State Fiscal Year 20xx \$0.00<br>State Fiscal Year 20xx \$0.00<br>State Fiscal Year 20xx \$0.00<br>State Fiscal Year 20xx \$0.00<br>Local Funds \$0.00<br>Total for All State Fiscal Years \$0.00 | <b>Option Agreement Number</b><br>Insert CMS number or Other Contract Number of this Option<br><br><b>Agreement Performance Beginning Date</b><br>The later of the Effective Date or Month, Day, Year<br><br><b>Current Agreement Expiration Date</b><br>Month, Day, Year |

1. **OPTIONS:**

A. Option to extend for an Extension Term or End of Term Extension.

2. **REQUIRED PROVISIONS:**A. **For use with Option 1(A):** In accordance with Section(s) 2.B/2.C of the Original Agreement referenced above, the State hereby exercises its option for an additional term/end of term extension, beginning Insert start date and ending on the current agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.B. **For use with all Option 1(A):** The Grant Agreement Amount table on the Agreement's Cover Page is hereby deleted and replaced with the Current Grant Agreement Amount table shown above.3. **OPTION EFFECTIVE DATE:**

A. The effective date of this Option Letter is upon approval of the State Controller or \_\_\_\_\_, whichever is later.

|   |  |
|---|--|
| <b>STATE OF COLORADO</b><br>Jared S. Polis, Governor<br>Department of Transportation<br>Shoshana M. Lew, Executive Director | In accordance with §24-30-202, C.R.S., this Option Letter is not valid until signed and dated below by the State Controller or an authorized delegate.<br><b>STATE CONTROLLER</b><br><b>Robert Jaros, CPA, MBA, JD</b> |
| By: _____<br>David Krutsinger, Director,<br>Division of Transit and Rail  | By: _____<br>Department of Transportation  |
| Date: _____   | Option Letter Effective Date: _____  |



## EXHIBIT C, TITLE VI – CIVIL RIGHTS

### Nondiscrimination Requirements

The Parties shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, national origin, sex, age or disability. During the performance of this Agreement, the Grantee, for itself, its assignees and successors in interest (hereinafter referred to as the “Grantee”) agrees as follows:

- (1) **Compliance with Regulations:** The Grantee shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this Agreement.
- (2) **Nondiscrimination:** The Grantee, with regard to the Work performed by it during the Agreement, shall not discriminate on the grounds of race, color, national origin, or sex in the selection and retention of subgrantees, including procurements of materials and leases of equipment. The Grantee shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subgrantees, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Grantee for Work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subgrantee or supplier shall be notified by the Grantee of the Grantee's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, national origin or sex.
- (4) **Information and Reports:** The Grantee shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Colorado Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Grantee is in the exclusive possession of another who fails or refuses to furnish this information the Grantee shall so certify to the Colorado Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Grantee's noncompliance with the nondiscrimination provisions of this Agreement, the Colorado Department of Transportation shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
  - (a) withholding of payments to the Grantee under the Agreement until the Grantee complies, and/or
  - (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) **Incorporation of Provisions:** The Grantee shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The Grantee shall take such action with respect to any subcontract or procurement as the Colorado Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that, in the event a Grantee becomes involved in, or is threatened with, litigation with a subgrantee or supplier as a result of such direction, the Grantee may request the Colorado Department of Transportation to enter into such litigation to protect the interests of the Colorado Department of Transportation.