

REQUEST FOR PROPOSAL (RFP)



Boulder County Purchasing
1325 Pearl Street
Boulder, CO 80302
purchasing@bouldercounty.org

**REQUEST FOR PROPOSAL
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RFP Number: **7102-20**

RFP Title: **Floodplain Partners: Flood Hazard
Mitigation and Acquisition Pilot**

RFP Questions Due: **January 24, 2020**

Submittal Due Date: **February 7, 2020**

Email Address: purchasing@bouldercounty.org

Documents included in this package:

- Proposal Instructions
- Terms and Conditions
- Specifications
- Insurance and W-9 Requirements
- Submittal Checklist
- Evaluation Criteria
- Signature Page
- Sample Contract



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PROPOSAL INSTRUCTIONS

1. Purpose/Background

Boulder County is seeking a qualified consultant to assist with the **Floodplain Partners: Flood Hazard Mitigation and Acquisition Pilot (“Floodplain Partners Pilot”)**. The Boulder County Floodplain Management Program received a FEMA Flood Mitigation Assistance (FMA) advanced assistance grant to complete the pilot program. The goal of the Floodplain Partners Pilot is to determine if a community flood hazard mitigation program is desired by the community and if it is feasible for properties with significant flood risk within Boulder County to meet the eligibility requirements for the FEMA Flood Mitigation Assistance (FMA) grant programs. The pilot will include outreach to the community, identification and evaluation of up to 12 properties, and up to six FMA program grant applications. The consultant support included in this RFP includes site-specific evaluations, alternatives analysis, and conceptual design of mitigation strategies; support of FEMA Benefit-Cost Analyses; and FEMA FMA applications.

2. Written Inquiries

All inquiries regarding this RFP will be submitted via email to the Boulder County Purchasing Office at purchasing@bouldercounty.org on or before **2:00 p.m. January 24, 2020**. A response from the county to all inquiries will be posted and sent via email no later than **January 30, 2020**.

Please do not contact any other county department or personnel with questions or for information regarding this solicitation.

3. Submittal Instructions

Submittals are due at the Internal Operations Services Information Desk or email box (preferred) listed below, for time and date recording on or before **10:00 a.m. Mountain Time on February 7, 2020**.

Your response can be submitted in the following ways. Please note that email responses to this solicitation are preferred, but are limited to a maximum of 50MB capacity. NO ZIP

FILES ALLOWED. Electronic submittals must be received in the email box listed below. Submittals sent to any other box will NOT be forwarded or accepted. This email box is only accessed on the due date of your questions or proposals. Please use the Delivery Receipt option to verify receipt of your email. It is the sole responsibility of the proposer to ensure their documents are received before the deadline specified above. Boulder County does not accept responsibility under any circumstance for delayed or failed email or mailed submittals.

Email purchasing@bouldercounty.org; identified as **RFP # 7102-20** in the subject line.

-OR-

US Mail One (1) unbound copy of your submittal, printed double-sided, 11 point, on at least 50% post-consumer, recycled paper must be submitted in a sealed envelope, clearly marked as **RFP # 7102-20**, to the Internal Operations Services Information Desk located at 1325 Pearl Street, Boulder, CO 80302.

All RFPs must be received and time and date recorded by authorized county staff by the above due date and time. Sole responsibility rests with the proposer to see that their RFP response is received on time at the stated location(s). Any responses received after due date and time will be returned to the proposer.

The Board of County Commissioners reserves the right to reject any and all responses, to waive any informalities or irregularities therein, and to accept the proposal that, in the opinion of the Board, is in the best interest of the Board and of the County of Boulder, State of Colorado.

Americans with Disabilities Act (ADA): If you need special services provided for under the Americans with Disabilities Act, contact the ADA Coordinator or the Human Resources office at (303) 441-3525 at least 48 hours before the scheduled event.



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TERMS AND CONDITIONS

1. Proposers are expected to examine the drawing, specifications, schedule of delivery, and all instructions. Failure to do so will be at the proposer's risk.
2. Each proposer will furnish the information required in the Request for Proposals.
3. The Contract/Purchase Order will be awarded to that responsible proposer whose submittal, conforming to the Request for Proposals, will be most advantageous to the County of Boulder, price and other factors considered.
4. The County of Boulder reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received, and to accept any portion of or all items proposed if deemed in the best interest of the County of Boulder to do so.
5. No submittal will be withdrawn for a period of thirty (30) days subsequent to the opening of proposals without the consent of the County Purchasing Agent or delegated representative.
6. A signed purchase order or contract furnished to the successful proposer results in a binding contract without further action by either party.
7. Late or unsigned proposals will not be accepted or considered. It is the responsibility of proposers to ensure that the proposal arrives at the Administrative Services Information Desk prior to the time indicated in the "Request for Proposals."
8. The proposed price will be exclusive of any Federal or State taxes from which the County of Boulder is exempt by law.
9. Any interpretation, correction or change of the RFP documents will be made by Addendum. Interpretations, corrections and changes of the RFP documents made in any other manner will not be binding, and proposer will not rely upon such interpretations, corrections and changes. The County's Representative will not be responsible for oral

clarification.

10. Confidential/Proprietary Information: Proposals submitted in response to this “Request for Proposals” and any resulting contract are subject to the provisions of the Colorado Public (Open) Records Act, 24-72-201 et.seq., C.R.S., as amended. Any restrictions on the use or inspection of material contained within the proposal and any resulting contract will be clearly stated in the proposal itself. Confidential/proprietary information must be readily identified, marked and separated/packaged from the rest of the proposal. **Co-mingling of confidential/proprietary and other information is NOT acceptable. Neither a proposal, in its entirety, nor proposal price information will be considered confidential/proprietary. Any information that will be included in any resulting contract cannot be considered confidential.**

11. Boulder County promotes the purchase/leasing of energy efficient, materials efficient and reduced toxic level products where availability, quality and budget constraints allow. Proposers are expected whenever possible to provide products that earn the ENERGY STAR and meet the ENERGY STAR specifications for energy efficiency with power management features enabled. Proposers are encouraged to offer products and equipment with post-consumer recycled-content materials. Products should be packaged and delivered with a minimum amount of recycled packaging that adequately protects the product, but is not excessive.



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SPECIFICATIONS

Scope of Work

The Floodplain Partners Pilot seeks to identify up to 12 properties in unincorporated Boulder County that would benefit from property acquisition, structure elevation, or structure relocation due to flood risk. Based on the results of site-specific evaluations and FEMA-approved benefit-cost analyses, up to six FEMA FMA applications will be completed and submitted for property acquisition, structure elevation, or structure relocation. This is a voluntary pilot and will only include property owners that are interested and willing to participate.

Tasks and Deliverables

Task 1: Program Approach and Project Management

In coordination with the Boulder County Project Manager, the consultant will be responsible for developing and implementing a project schedule that includes milestones, deliverables, coordination activities, etc. The project must be completed by December 31, 2020. The consultant should plan to participate in planning and coordination meetings with Boulder County on a regular basis throughout the project.

Scope:

- Develop a project schedule including milestones, critical path items, and project deliverables
- Attend project meetings or conference calls an average of twice per month

Deliverables:

- Project schedule

Task 2: Program Establishment Activities

Program establishment activities include outreach activities to identify potential pilot program participants and to conduct site-specific property evaluations. Because this will be a new program and will depend on willing property owners to participate in it, it will be necessary to conduct community outreach activities to provide meaningful information about the program to community members to enable and encourage participation. Anticipated activities include targeted mailings, one-on-one meetings with property owners, and the development of print and digital educational materials.

Community Outreach

Boulder County will primarily be responsible for community outreach activities. It is anticipated that the consultant will support community outreach activities by participating in one-on-one property owner meetings as requested. Other support activities may be requested.

Site-Specific Alternatives Analysis, Conceptual Design, and Cost Estimate

Consultant will conduct site-specific alternatives analysis which will include property evaluations to preliminarily address the minimum data requirements to determine what kind of mitigation strategies can be implemented on a specific parcel and an initial screening to determine if the proposed strategy will likely be eligible for FEMA FMA assistance. Consultant will complete conceptual designs for those properties that will likely meet the program requirements for FEMA FMA assistance.

Scope:

- *Community Outreach*- Participate in one-on-one property owner meetings to explain the Floodplain Partners pilot program as requested. It is estimated that a total of five property owner meetings will be required in addition to the site visits required for the alternatives analysis and conceptual designs outlined below. Consultants should include travel time and mileage at the current GSA rate to meetings throughout the county in their cost estimate for this task.
- *Site-Specific Alternatives Analysis*- Conduct preliminary site-specific property evaluations on 12 properties. Provide recommendations on flood mitigation strategies that are feasible, will reduce flood risk, and will likely meet the program requirements for FEMA FMA Assistance. The alternatives analysis may include, evaluation of flood risk, review of building construction detail, and initial cost-benefit assessment.
- *Conceptual Design and Cost Estimate*- Develop conceptual design and line-item cost estimate for up to six properties that are most like to be eligible based on the alternatives analysis. Design plans should be sufficient for completion the FEMA-approved Benefit-Cost Analysis (BCA) and FEMA FMA application.
 - *Note:* Boulder County will provide technical information needed to complete the site-specific alternatives analysis and the conceptual design and cost estimates. The budget for these items is limited and will be approved by Boulder County on a case-by-case basis. Examples of technical information includes:
 - Survey work such as elevation certificates, topographic survey, etc.
 - Property appraisal
 - Geotechnical evaluation

Deliverables:

- A written report/memo for each property that includes the alternatives analysis, interpretation of flood risk analysis, interpretation of technical information, recommended mitigation strategy, and likelihood for meeting the FEMA FMA requirements for up to 12 properties.
- Conceptual design documents for up to six properties.
- Line-item cost estimate for up to six properties.
- Written documentation should be in a format that can be used for completing the FEMA-approved BCA tool and as documentation for FMA applications.

Task 3: Benefit-Cost Analysis

For those properties that will likely meet the FEMA FMA program requirements, a complete Benefit-Cost Analysis (BCA) will be completed. It is anticipated that Boulder County will primarily be responsible for completing the BCA using the information provided through Task 2, with the consultant responsible for providing information, input, and guidance to Boulder County as requested. However, depending on staff availability and budget constraints, the consultant may be responsible for completing the BCA analyses. The consultant should submit proposals for the scope outlined in both Task 3a and Task 3b below.

Task 3a

Scope:

- Provide information or guidance to Boulder County as requested. Consultant should plan for four hours for six BCA analyses (24 hours total).

Deliverables:

- Requested information or guidance.

Task 3b

Scope:

- Consultant will complete the BCA analysis using FEMA BCA Cost-Calculator V6.0 or other FEMA-approved tool for up to six projects.

Deliverables:

- Completed BCA analysis for up to six projects.
- Backup documentation supporting BCA analysis for up to six projects.

Task 4: Develop and Submit FEMA FMA Applications

For those properties that meet the FEMA's benefic-cost requirements and assuming the property owner would like to move forward, FEMA FMA applications will be prepared, with the goal of securing funding to implement the identified mitigation strategies. Boulder County will primarily be responsible for completing the FEMA FMA applications, with the consultant responsible for providing information, input, and guidance to Boulder County as requested. However, depending on staff availability and budget constraints, the consultant may be responsible for completing the FMA applications. The consultant should submit proposals for the scope outlined in both Task 4a and Task 4b below.

Task 4a

Scope:

- Provide information or guidance to Boulder County as requested. Consultant should plan for four hours for six FMA applications (24 hours total).

Deliverables:

- Requested information or guidance.

Task 4b

Scope:

- Consultant will complete the FEMA FMA application for up to six projects.

Deliverables:

- Completed FEMA FMA applications for up to six projects.

Anticipated Schedule

This project is grant-funded and must adhere to strict deadlines. All work on the project must be completed by **Dec. 31, 2020**. In addition, the site-specific analysis (Task 2) and the benefit-cost analysis (Task 3) tasks should be completed by **Oct. 1, 2020** so that preparation of the FEMA FMA applications can begin in conjunction with the anticipated FY20 FEMA FMA application process. The estimated proposal review, award, and contracting schedule is outlined below. Schedule may be adjusted as necessary:

1. Questions due to Boulder County: **January 24, 2020**
2. Responses to questions from Boulder County: **January 30, 2020**
3. Last day for submitting proposal: **February 7, 2020**
4. Proposals reviewed by review committee: **February 14, 2020**
5. Interviews with proposers (if determined necessary by the review committee): **February 19-21, 2020**
6. Recommendation of Award: **February 24, 2020**
7. Execution of Agreement: **March 20, 2020**

Commence Work: Immediately following execution of agreement with Boulder County Board of Commissioners.

A sample project schedule is outlined below. Consultant can propose an alternative schedule, provided Task 2 and Task 3 are complete by Oct. 1, 2020 and the entire project is completed by Dec. 31, 2020.

	2019				2020											
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	
Procurement																
Outreach																
Parcel-Specific Analysis																
BCA																
FEMA FMA applications																

Funding Availability

This project has a budget of approximately \$50,000 for the scope of work outlined in this RFP (not including task 3b and 4b). If elements of the proposed scope of work are expected to exceed budget, applicants should include details about scaling the scope of the project to meet the budget and/or the cost for elements outside the proposed budget. Boulder County reserves the right to revise the scope of work to meet funding availability.



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INSURANCE AND W-9 REQUIREMENTS

INSURANCE REQUIREMENTS

General Liability	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate \$2,000,000 Products Completed Operations Aggregate 3 years Products/Completed Operations
Excess or Umbrella	May be required if higher limits are requested.
Automobile Liability	\$1,000,000 Each Accident *Including Hired & Non-Owned Auto
Worker's Compensation and Employer's Liability	Statutory limits Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease-Each Employee.
Professional Liability or Errors and Omissions	\$1,000,000 Per Loss \$1,000,000 Aggregate Coverage maintained or extended discovery period for 2 years

Note that the above insurance amounts are the minimum required for this project. **Proof of current insurance must be provided with your proposal in the form of a sample certificate or your proposal will be deemed non-responsive.** If you require a waiver of insurance requirements (e.g. Workers' Compensation and sole proprietorships) you may request one in your response with an explanation.

New certificates will be requested if the contract process takes more than 30 days after an award.

W-9 REQUIREMENT

Provide a copy of your business's W-9 with your proposal.

SAM.gov REGISTRATION

Please provide a copy of your business' registration in sam.gov with your proposal.

DUNS NUMBER

Please provide your business' DUNS number with your proposal.



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SUBMITTAL SECTION

The proposer's attention is especially called to the items listed below, which must be submitted in full as part of the PROPOSAL. Failure to submit any of the documents listed below as a part of your PROPOSAL, or failure to acknowledge any addendum in writing with your PROPOSAL, or submitting a proposal on any condition, limitation or provision not officially invited in this Request for Proposal (RFP) may be cause for rejection of the PROPOSAL.

THIS CHECKLIST MUST BE SUBMITTED AS PART OF YOUR PROPOSAL PACKAGE: Proposer will check each box indicating compliance:

INCLUDED	ITEM
	Project Team
	Relevant Project Experience
	Proposed Work Schedule and Workload Capacity
	References
	Cost Proposal
	Copy of any contract you would require to be executed in this process
	Insurance Certificate
	W-9
	Signature Page
	Addendum Acknowledgement(s) (If Applicable)

The response to this RFP, for items A-E below, is limited to a maximum of 25 8.5"x11" pages, excluding front and back covers, signature page, W-9, and proof of insurance, using no smaller than 11-point font and no less than 0.5" margins. Sheets sized 11"x17" count as two pages. Each response should be complete yet concise and contain only the elements shown below. Please avoid submittal of extraneous and unnecessary information.

A. Project Team

Describe the consultant's team for the project. List any proposed sub-consultants. For the key project team members, please include:

1. A brief description of the individual's background and relevant experience (brief resume)
2. Each individual's years of relevant experience
3. The role each individual will take on the project

B. Relevant Project Experience

Provide examples of relevant project experience. Please include a description of the project scope, timeline, budget, and results.

C. Proposed Work Schedule and Workload Capacity

The proposal shall include:

- A proposed work schedule showing milestones, critical path items, and project deliverables
- The team's workload capacity and commitments from March 2020-December 2020.

D. Cost Proposal

Provide an itemized cost proposal that corresponds to the consultant's approach to the project, work schedule, and Scope of Work. Costs should be itemized by task as described in the Scope of Work, including separate costs for tasks 3a and 3b as well as 4a and 4b. Hourly fees and corresponding hours per project staff per task should be included.

This project has a budget of approximately \$50,000 for the scope of work outlined in this RFP (not including task 3b and 4b). If elements of the proposed scope of work are expected to exceed budget, applicants should include details about scaling the scope of the project to meet the budget and/or the cost for elements outside the proposed budget. Boulder County reserves the right to revise the scope of work to meet funding availability.

E. References

Include a list of clients for which the consulting company has performed similar work. Include contact information for each client, with a maximum of five clients listed.

F. Other

- Copy of any contract or contract terms that you would require to be executed in this process
- Insurance Certificate
- W-9
- Signature Page
- Addendum Acknowledgements (if applicable)



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EVALUATION CRITERIA

The proposals will be reviewed by a selection committee. The committee may request additional information from vendors or request interviews with one or more vendors. Final evaluation and selection may be based on, but not limited to, any or all of the following:

A scoring matrix with the order and priority of criteria to be used by the county in its evaluation and selection process is shown below:

Description	Points
Experience and Qualifications	60
Proposed Work Schedule and Workload Capacity	20
Cost Proposal	20
<i>Total Possible</i>	100

Experience and Qualifications

The Experience and Qualifications criteria will be evaluated based on the unique qualifications of the consultant(s) and relevant project experience of the team. It is anticipated that the skills and experience needed to complete this scope of work will include hydraulic engineering and structural engineering, however, the proposers are encouraged to select a team that they deem most qualified to complete the scope of work as outlined in this RFP.

Specific experience and qualifications needed to complete this project include:

- Experience with site-specific evaluation tasks, including:
 - Communicating effectively with property owners
 - Evaluating flood risk for structures, including potential flood damage impacts
 - Completing alternatives analysis and making recommendations to mitigate flood risk
 - Interpreting technical analysis such as surveys and geotechnical assessments
 - Reviewing of building construction detail
 - Creating preliminary engineering design plans for relocation or elevation of structures, including estimating costs for elevating or relocating structures
 - Understanding of the FEMA benefit-cost analysis tools and which projects are most likely to be eligible for FMA funding

- Experience with FEMA National Flood Insurance Program and Flood Mitigation Assistance Programs and a demonstrated knowledge of mitigation options, eligibility requirements, and FEMA-approved benefit-costs analysis tools.
- Past successful experience applying for, and receiving, FMA grant awards for acquisition, relocation, or elevation projects.

Proposed Work Schedule and Workload Capacity:

Proposed Work Schedule and Workload Capacity criteria will be evaluated based on the demonstrated capacity of the consultant to complete the work prior to Dec. 31, 2020 and Task 2 and Task 3 by Sept. 1, 2020. This category will also be evaluated based on the demonstrated understanding of project components and scheduling.

Cost Proposal

The cost proposal criteria will be evaluated based on the reasonableness of the costs proposed.



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SIGNATURE PAGE

Contact Information		Response
Company Name including DBA		
List Type of Organization (Corporation, Partnership, etc.)		
Name, Title, and Email Address of Person Authorized to Contract with Boulder County		
Company Address		
Company Phone Number		
Company Website		

By signing below I certify that:

I am authorized to bid on my company's behalf.
 I am not currently an employee of Boulder County.
 None of my employees or agents is currently an employee of Boulder County.
 I am not related to any Boulder County employee or Elected Official.
 (Sole Proprietorships Only) I am not a Public Employees' Retirement Association (PERA) retiree.

**Signature of Person Authorized to Bid on
 Company's Behalf**

Date

Note: If you cannot certify the above statements, please explain in a statement of explanation.

Boulder County Sample Contract

THIS CONTRACT ("Contract") is entered into by and between the County of Boulder, State of Colorado, a body corporate and politic, acting by and through its Board of County Commissioners for the benefit of the [Department] ("County") and [Supplier] ("Contractor"). County and Contractor are each a "Party," and collectively the "Parties."

In consideration of the mutual covenants contained in this Contract, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation into Contract: The **Details Summary** is incorporated into this Contract. The **Contract Documents** are incorporated into this Contract by reference, except to the extent that the Proposal, if any is incorporated, contains any obligations placed upon County and not otherwise contained in this Contract.
2. Work to be Performed: Contractor will provide all labor and equipment and do all tasks necessary and incidental to performing the work as described in the **Details Summary** and **Contract Documents** (the "Work"). Contractor will perform the Work (a) in a good and workmanlike manner, (b) at its own cost and expense, (c) in accordance with recognized industry standards of care, skill and diligence for the type of work being performed, and (d) in strict accordance with the Contract.
3. Term of Contract: The **Contract Term** begins on the **Start Date** and expires on the **Expiration Date**, unless terminated sooner. All the Work must be performed during the **Contract Term**.
4. Payment for Work Performed: In consideration of the Work performed by Contractor, and subject to conditions contained in this Contract, County will pay an amount not to exceed the **Contract Amount** to Contractor in accordance with the **Contract Documents**.
5. Invoicing: Contractor will promptly provide a copy of its Form W-9 and invoice template to County upon request. Contractor must submit an invoice to the County by the fifteenth (15th) day of the month following completion of the Work. All invoices submitted require the following components: Contractor's name and address (submitted W-9 address must match remit address), detailed description of services, dates of services, itemization of labor and materials costs, "Bill to: Boulder County" language, payment remittance address, payer, name and address, date of invoice, unique invoice number, and total amount due. Contractor must send all completed invoices to the **Invoice Contact** in the **Details Summary**. Email delivery is preferred by the County; County may require delivery of invoices by email. Failure to submit invoices in a timely manner and in accordance with the terms of this Contract may cause a delay in payment. County may recoup any damages incurred because of Contractor's failure to submit invoices pursuant to the terms of this paragraph. County's acceptance or payment of an invoice will not constitute acceptance of any Work performed under this Contract.
6. Extra Time to Complete the Work: If Contractor cannot complete the Work by the **Expiration Date**, Contractor may request extra time to complete the Work. County, in its sole discretion, may grant Contractor additional time to complete the Work and, if so, will provide Contractor with written notice of the amount of extra time granted. County granting extra time to complete the Work will not entitle Contractor to additional compensation from County. This Contract will remain in full force and effect during any time period that Contractor is permitted to finish completing the Work.

7. Extension of Contract Term (Additional Work): Upon mutual agreement of the Parties, this Contract may be extended until the **Final End Date**. During any extended **Contract Term**, the terms of this Contract will remain in full force and effect, unless otherwise amended in writing by the Parties. Where the Contractor will provide additional services for additional compensation beyond the initial **Contract Amount**, the Parties must execute a written amendment before the then-current **Expiration Date**. If necessary, the written amendment will incorporate an updated Scope of Work and updated Fee Schedule as exhibits. Contractor must provide a current Certificate of Insurance to the County that complies with the **Insurance Requirements** of this Contract, if any, prior to any extended **Contract Term**.

8. Schedule of Work: County may designate the hours (on a daily or weekly basis) during which Contractor can perform the Work, strictly for the purposes of minimizing inconvenience to the County and interference with County operations. Contractor will otherwise set its own work schedule.

9. Indemnity: Contractor will be liable for any damages to persons or property caused by or arising out of the actions, obligations, or omissions of Contractor, its employees, agents, representatives or other persons acting under Contractor's direction or control in performing or failing to perform the Work under this Contract. Contractor will indemnify and hold harmless County, its elected and appointed officials, and its employees, agents and representatives (the "indemnified parties"), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including attorneys' fees, which may be made or brought or which may result against any of the indemnified parties as a result or on account of the actions or omissions of Contractor, its employees, agents or representatives, or other persons acting under Contractor's direction or control. This indemnification obligation will extend to claims based on Contractor's unauthorized use or disclosure of confidential information and intellectual property infringement. County will not be obligated to indemnify or defend Contractor under any circumstances. Contractor's obligations under this provision shall survive expiration or termination of this Contract.

10. Nondiscrimination: Contractor will comply with the letter and spirit of the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, State and Federal laws concerning discrimination and unfair employment practices. County prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-economic status, sexual orientation, genetic information, or any other status protected by applicable Federal, State or local law. Contractor must require that its subcontractors, if any, similarly comply with all applicable laws concerning discrimination and unfair employment practices.

11. Information and Reports: Contractor will provide to authorized County, State, and Federal government representatives all information and reports that may be required for any purpose authorized by law. Contractor will permit access to such representatives to Contractor's facilities, books, records, accounts, and any other relevant sources of information. Where information required by a representative is in the exclusive possession of a person or entity other than Contractor, Contractor must so certify to the County and explain what efforts it has made to obtain the information.

12. Independent Contractor: Contractor is an independent contractor for all purposes in performing the Work. Contractor is not an employee of the County for any purpose, including the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, County will not withhold or pay any income tax, payroll tax, or retirement contribution of any kind on behalf of Contractor or Contractor's employees. As an independent contractor,

Contractor is responsible for employing and directing such personnel and agents as it requires to perform the Work. Contractor will exercise complete authority over its personnel and agents and will be fully responsible for their actions.

13. Termination for Non-Appropriation: The other provisions of this Contract notwithstanding, the County is prohibited by law from making commitments beyond the current fiscal year. Payment to Contractor beyond the current fiscal year is contingent on the appropriation and continuing availability of funding in any subsequent year. County has reason to believe that sufficient funds will be available for the full **Contract Term**. Where, however, funds are not allocated for any fiscal period beyond the current fiscal year, County may terminate this Contract without penalty by providing seven (7) days' written notice to Contractor.

14. Termination for Breach: Either Party's failure to perform any of its material obligations under this Contract, in whole or in part or in a timely or satisfactory manner, will be a breach. 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 thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of this Contract.

15. Termination for Convenience: County may terminate this Contract, in whole or in part, for any reason, upon seven (7) days' advance written notice to Contractor.

16. Remedies for Non-Performance: If Contractor fails to perform any of its obligations under this Contract, County may, at its sole discretion, exercise one or more of the following remedies, which shall survive expiration or termination of this Contract:

a. Suspend Performance: County may require that Contractor suspend performance of all or any portion of the Work pending necessary corrective action specified by the County and without entitling Contractor to an increase in compensation or extension of the performance schedule. Contractor must promptly stop performance and incurring costs upon delivery of a notice of suspension by the County.

b. Withhold Payment Pending Corrections: County may permit Contractor to correct any rejected Work at the County's discretion. Upon County's request, Contractor must correct rejected work at Contractor's sole expense within the time frame established by the County. Upon completion of the corrections satisfactory to the County, County will remit payment to Contractor.

c. Deny Payment: County may deny payment for any Work that does not comply with the requirements of the Contract or that Contractor otherwise fails to provide or complete, as determined by the County in its sole discretion. Upon County request, Contractor will promptly refund any amounts prepaid by the County with respect to such non-compliant Work.

d. Removal: Upon County's request, Contractor will remove any of its employees or agents from performance of the Work, if County, in its sole discretion, deems any such person to be incompetent, careless, unsuitable, or otherwise unacceptable.

17. Binding Arbitration Prohibited: County does not agree to binding arbitration by any extra-judicial body or person.

18. Conflicts of Interest: Contractor must not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Contractor's obligations.

19. Notices: All notices provided under this Contract must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's **Contact** at the address specified in the **Details Summary**. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

20. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally, including but not limited to: C.R.S. § 38-26-107, which requires withholding funds where the County receives a claim for payment from a supplier or subcontractor of Contractor upon notice of final settlement (required for public works contracts that exceed \$150,000); C.R.S. § 8-17-101 et seq.; C.R.S. § 18-8-301, et seq.; and C.R.S. § 18-8-401, et seq.

21. Public Contracts for Services (C.R.S. §§ 8-17.5-101, et seq.): Contractor hereby certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and further certifies that it will confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Contract by participating in the E-Verify Program established under Pub. L. 104-28 or the department verification program established under C.R.S. § 8-17.5-102(5)(c). Contractor (i) shall not knowingly employ or contract with an illegal alien to perform work under this Contract; (ii) shall not enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract; (iii) has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Contract through participation in the E-Verify program or department program; (iv) is prohibited from using either the E-Verify program or department program procedures to undertake preemployment screening of job applicants while this Contract is being performed; and (v) shall comply with any reasonable request by the department made in the course of an investigation that the Colorado Department of Labor and Employment is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5). If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien, Contractor shall (a) notify the subcontractor and County within three (3) days that Contractor has actual knowledge that subcontractor is employing or contracting with an illegal alien; and (b) terminate the subcontract if, within three (3) days of receiving notice hereunder, subcontractor does not stop employing or contracting with the illegal alien; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien. Contractor's violation of this provision will constitute a material breach of this Contract, entitling the County to terminate the contract for breach. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to the County.

22. Entire Agreement/Binding Effect/Amendments: This Contract represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Contract terminates any prior agreements, whether written or oral in whole or in part, between the Parties relating to the Work. This Contract may be amended only by a written agreement signed by both Parties.

23. Assignment/Subcontractors: This Contract may not be assigned or subcontracted by Contractor without the prior written consent of the County. If Contractor subcontracts any of its obligations under this Contract, Contractor will remain liable to the County for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Contract.

24. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Contract. Any claim relating to this Contract or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.
25. Breach: The failure of either Party to exercise any of its rights under this Contract will not be deemed to be a waiver of such rights or a waiver of any breach of the Contract. All remedies available to a Party in this Contract are cumulative and in addition to every other remedy provided by law.
26. Severability: If any provision of this Contract becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Contract will continue to be operative and binding on the Parties.
27. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Contract are reserved to the Parties. Any other person receiving services or benefits under this Contract is an incidental beneficiary only and has no rights under this Contract. Notwithstanding, where the beneficiary **Department** is led by an Elected Official, such Elected Official shall be considered a third-party beneficiary.
28. Colorado Open Records Act: County may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-101, et seq.
29. Conflict of Provisions: If there is any conflict between the terms of the main body of this Contract and the terms of any of the **Contract Documents**, the terms of the main body of the Contract will control.
30. Governmental Immunity: Nothing in this Contract shall be construed in any way to be a waiver of the County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.
31. Representations and Warranties: Contractor represents and warrants the following:
- a. Execution of this Contract and performance thereof is within Contractor's duly authorized powers;
 - b. The individual executing this Contract is authorized to do so by Contractor;
 - c. Contractor is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the Contractor; and
 - d. Contractor and its subcontractors, if any, are financially solvent, able to pay all debts as they mature, and have sufficient working capital to complete the Work and perform all obligations under the Contract.
32. Legal Compliance: Contractor assumes full responsibility for obtaining and maintaining any permits and licenses required to perform the Work. Contractor's performance under this Contract and the Work itself will comply with all Federal, State, and local laws, regulations, ordinances and codes.
33. Litigation Reporting: Contractor is not currently involved in any action before a court or other administrative decision-making body that could affect Contractor's ability to perform the Work. Contractor will promptly notify the County if Contractor is served with a pleading or other document in connection with any such action.
34. Tax Exemption: County is exempt from payment of Federal, State, and local government taxes. Contractor shall collect no tax from the County, and the County shall not be liable to pay

any taxes imposed on Contractor. County shall provide its tax exemption status information to Contractor upon request.

35. Delegation of Authority: The Parties acknowledge that the Board of County Commissioners has delegated authority to the Department Head or Elected Official that leads the beneficiary **Department** and their designees to act on behalf of the County under the terms of this Contract, including but not limited to the authority to terminate this Contract.

36. Ownership of Work Product: All work product, property, data, documentation, information or materials conceived, discovered, developed or created by Contractor pursuant to this Contract ("Work Product") will be owned exclusively by the County. To the extent possible, any Work Product will be deemed to be a work made for hire. Contractor unconditionally and irrevocably transfers and assigns to the County all right, title and interest in and to any Work Product.

37. Publicity Releases: Contractor will not refer to this Contract or the County in commercial advertising without prior written consent of the County. This provision shall survive expiration or termination of this Contract.

38. Execution by Counterparts; Electronic Signatures: This Contract may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Contract solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Contract in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

39. Limitation on Public Statements and Lobbying Activity. During the term of this Contract, Contractor may receive from the County its confidential data, work product, or other privileged or confidential information that is protected by law. To maintain the fact and appearance of absolute objectivity, Contractor shall not, without the prior written consent of the County, which shall not be unreasonably withheld, do any of the following: (a) disclose information obtained because of this contractual relationship to any third party; (b) lobby any State or Federal agency on any pending matter while this Contract is effective; or (c) make any public statements or appear at any time to give testimony at any public meeting on the subject matters regarding which Contractor is or was retained by the County. County may set reasonable conditions on any disclosure authorized by the County under this provision. Notwithstanding, Contractor may make disclosures as required by law, and to law enforcement officials in connection with any criminal justice investigation.

40. Sustainability: County encourages Contractor to consider the procurement and use of environmentally preferable products and services while performing services under this Contract. "Environmentally preferable purchasing" means making purchasing choices for products and services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products and services that serve the same purpose. Environmentally preferable purchasing is consistent with the County's commitment to protecting our air, water, soil, and climate for current and future generations. County encourages Contractor to incorporate the following actions into Contractor's performance of the Work: environmentally preferable supplies and services; conservation of water; efficient energy use; waste prevention; reuse and recycle construction and de-construction materials in a manner that maximizes reuse of materials; sustainable transportation choices, including consideration to business communication software such as Skype alternative to air travel and public transit or carpooling for in-person meetings; pollution prevention; low toxicity for public health & safety; and reduced emissions to address climate change.

41. **Insurance Requirements:** Prior to commencing the Work, Contractor will provide a Certificate of Insurance to the County demonstrating adequate insurance coverage as required by this paragraph. All policies evidencing coverage required by the Contract will be issued by insurance companies satisfactory to the County. Contractor will forward Certificates of Insurance directly to the **County Department** and **Contact** listed in the **Details Summary**.

a. For the entire duration of this Contract including any extended or renewed terms, and longer as may be required by this Contract, Contractor shall procure and maintain at its own expense, and without cost to the County, the following kinds and minimum amounts of insurance to insure the liability risks that Contractor has assumed under this Contract:

i. **Commercial General Liability**

Non-Construction contracts use the following language:

This coverage should be provided on an Occurrence Form, ISO CG001 or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products Completed Operations Aggregate.

Construction Contracts only – include the following paragraph:

Coverage should be provided on an Occurrence form, ISO CG0001 or equivalent. The policy shall be endorsed to include Additional Insured Owners, Lessees or Contractors endorsements CG 2038 (or equivalent), Designated Construction Project(s) General Aggregate Endorsement CG2503 (or equivalent) and Additional Insured Completed Operations for Owners, Lessees or Contractors CG 2037 (or equivalent). Minimum limits required of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products/Completed Operations Aggregate. The County requires the Products/Completed Operations coverage to be provided 3 years after completion of construction. An endorsement must be included with the certificate.

ii. **Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

This coverage may not be required if Contractor is not using a vehicle as part of its performance under the contract. Contact Risk Management with any questions.

iii. **Workers' Compensation and Employer's Liability**

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease-Each Employee.

This coverage may not be required if contractor is not mandated under State law to maintain this coverage. A waiver is available on the contracts routing website.

iv. **Umbrella / Excess Insurance**

Umbrella/Excess Liability insurance in the amount \$[X],000,000.00, following form.

This insurance is a broad, high-limit policy, which acts more than the underlying primary insurance policy. This coverage is designed to provide additional liability limits beyond the primary insurance limits and is triggered upon the underlying

limits becoming exhausted. Umbrella / Excess insurance is most commonly required when an exposure to the County could potentially create liabilities in excess of the basic insurance limits. The most common limits for these policies range from \$2,000,000 to \$5,000,000.

Please consult with Risk Management if you feel this coverage should be required.

IN ADDITION TO THE ABOVE, ONE OR MORE OF THE FOLLOWING FOUR (4) INSURANCE COVERAGES MAY BE REQUIRED. CONTACT RISK MANAGEMENT IF YOU HAVE QUESTIONS ABOUT WHICH INSURANCE COVERAGE TO INCLUDE. DELETE THIS INSTRUCTION (AND ANY INAPPLICABLE INSURANCE PARAGRAPHS) WHEN FINALIZING THE CONTRACT:

v. **Professional Liability (Errors and Omissions)**

All contractors required to be professionally certified by the State of Colorado (i.e., architects, engineers, doctors, nurses, etc.) and/or any consultants whose errors in judgment, planning, design, etc. could result in economic loss to the County must provide proof of professional liability coverage. This also applies to anyone managing or overseeing construction.

Professional liability coverage with minimum limits of \$1,000,000 Per Loss and \$1,000,000 Aggregate. Professional Liability provisions indemnifying for loss and expense resulting from errors, omission, mistakes or malpractice is acceptable and may be written on a claims-made basis. The contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

vi. **Pollution Liability**

This coverage is required whenever work under the contract involves pollution risk to the environment or losses caused by pollution conditions (including asbestos) that may arise from the operations of the Contractor described in the Contractor's scope of services.

Coverage pay for those sums the Contractor becomes legally obligated to pay as damages because of Bodily Injury, Property Damage or environmental Damage arising out of a pollution incident caused by the Contractor's work including Completed Operations. Coverage shall include emergency response expenses, pollution liability during transportation (if applicable) and at Non-Owned Waste Disposal Site (if applicable). The Minimum limits required are \$1,000,000 Per Occurrence/Loss and \$1,000,000 Policy Aggregate. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. County shall be named as an additional insured for ongoing operations and completed operations.

vii. **Third Party Commercial Crime Insurance / Third Party Fidelity Bond**

Crime / Third Party Fidelity covers the contractor and the contractor's employees when engaged in work for a client on behalf of the County. This coverage is for employee dishonesty, theft, embezzlement, forgery and alteration. Coverage is required when the contractor will be handling money or collecting fees on behalf of

the County or when the contractor has access to client's personal property and/or documentation

The Crime limit shall be \$1,000,000 Per Loss and include an endorsement for "Employee Theft of Client Property". In order to provide coverage to County during the course of this contract, Commercial Crime policies must be endorsed to cover Third Party Fidelity. Third party fidelity covers the vendor's employees when engaged in work for a client. In addition, the County will be listed as loss payee on the commercial crime coverage. This third-party coverage can also be provided by obtaining a third-party fidelity bond.

viii. **Privacy / Cyber Liability Insurance**

As a provider of a service which *may* require the knowledge and retention of personal identifiable information including but not limited to, names, dates of birth, social security numbers, usernames, and passwords, and/or HIPAA sensitive personal information of clients served, the following minimum insurance limits are required:

Contractors with 10 or fewer County clients:	\$50,000
Contractors with 11 – 15 County clients:	\$500,000
Contractors with more than 25 County clients:	\$1,000,000

If the scope does not pertain to clients directly, contact Risk Management for appropriate language.

ix. **Sexual Abuse and Molestation Coverage**

As a provider of a service which has contact with individuals that are part of a sensitive population and are in a position of trust the following minimum insurance limits are required:

Contractors with 5 or fewer County clients:	\$100,000
Contractors with 6-10 County clients:	\$250,000
Contractors with 11-15 County clients:	\$500,000
Contractors with 16 or more County clients:	\$1,000,000

If the number of clients increases during the contract period, the required coverage limit will increase to correspond accordingly.

If the scope does not pertain to clients directly, contact Risk Management for appropriate language.

THE STATED INSURANCE LIMITS FOR ALL COVERAGES ARE MINIMUM AMOUNTS; DEPENDING ON THE CONTRACT, HIGHER LIMITS MAY BE REQUIRED OR ADVISABLE. CONTACT RISK MANAGEMENT IF YOU HAVE ANY QUESTIONS ABOUT MINIMUM LIMITS. DELETE THIS PARAGRAPH WHEN FINALIZING THE CONTRACT.

b. Boulder County as Additional Insured: Boulder County shall be named as an additional insured for General Liability, Umbrella/Excess Liability, and Pollution Liability, as designated in this Contract. Additional insured shall be endorsed to the policy.

THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS: *County of Boulder, State of Colorado, a body corporate and politic, is named as Additional Insured.*

c. Notice of Cancellation: Each insurance policy required by this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days' prior written notice has been given to the County except when cancellation is for non-payment of premium, then ten (10) days' prior notice may be given. If any insurance company

refuses to provide the required notice, Contractor or its insurance broker shall notify the County any cancellation, suspension, or nonrenewal of any insurance policy within seven (7) days of receipt of insurers' notification to that effect.

d. Insurance Obligations of County: County is not required to maintain or procure any insurance coverage beyond the coverage maintained by the County in its standard course of business. Any insurance obligations placed on the County in any of the **Contract Documents** shall be null and void.

e. Deductible: Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of Contractor.

f. Primacy of Coverage: Coverage required of Contractor and its subcontractors, if any, shall be primary over any insurance or self-insurance program carried by the County.

g. Subrogation Waiver: All insurance policies in any way related to this Contract secured or maintained by Contractor as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against County, its organizations, officers, agents, employees, and volunteers.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed and entered into this Contract as of the latter day and year indicated below.

SIGNED for and on behalf of Boulder County	SIGNED for and on behalf of Contractor
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:
↓↓ <i>For Board-signed documents only</i> ↓↓	
Attest:	<i>Initials</i>
Attestor Name:	
Attestor Title:	

FEMA ADDENDUM

OFFICE OF MANAGEMENT AND BUDGET POST FEDERAL AWARD REQUIREMENTS FOR PROCUREMENT CONTRACTS

This is an addendum to the [**Contract Title**], RFP [**number**], Contract (the “Contract”) between [**contractor**] (“Contractor”), and Boulder County, (the “County”).

The parties acknowledge that the above-referenced contract is subject to the provisions of 2 C.F.R. § 200 et seq., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as well as additional requirements promulgated by the Federal Emergency Management Agency (FEMA). Notwithstanding anything contained in the Contract or this Addendum, Contractor agrees to comply with all applicable provisions of 2 C.F.R. § 200 et seq., as amended. This Addendum is hereby expressly incorporated into the Contract between Boulder County and the Contractor. Regardless of any conflict of provisions language contained in the Contract, to the extent that the terms of the Contract and this Addendum conflict, the terms of this Addendum shall control.

The applicability of the following contract provisions are described in brackets, below. As applicable, the following provisions are hereby added and incorporated into the above-referenced Contract:

Audit Rights

[*All contracts*]

Boulder County and the Comptroller General of the United States, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms (2 C.F.R. § 200.321).

[*All contracts*]

If subcontracts are to be let, Contractor must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. As set forth in 2 C.F.R. § 200.321(b)(1)-(5), such affirmative steps must include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Bonding requirements (2 C.F.R. § 200.325).

[Construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold as defined in 2 C.F.R. § 200.88 and set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908]

Except where the Federal awarding agency or pass-through entity has made a determination that alternative bonding policy and requirements adequately protect the Federal interest, Contractor agrees to comply with the following minimum bonding requirements:

- (a) Contractor must provide a bid guarantee equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the Contractor will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) Contractor must provide a performance bond on the part of the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.
- (c) Contractor must provide a payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Appendix II: Contract Provisions for non-Federal Entity Contracts Under Federal Awards

(A) *[For contracts for more than the simplified acquisition threshold, as defined in 2 C.F.R. § 200.88 and set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908]*

Note: In accordance with 2 C.F.R. § 200.318(a), Boulder County's documented procurement procedures require formal procurement processes for all procurements in an amount equal to or greater than \$50,000.

Breach. Any breach of the Contract by Contractor shall be governed by the Termination and Related Remedies provision of the Contract. Additionally, in the event that the County incurs damages as a result of Contractor's breach, the County may pursue recovery of such damages from Contractor. The County further retains the right to seek specific performance of the Contract at any time as authorized by law. The County further retains the right to otherwise pursue any remedies available to the County as a result of the Contractor's breach, including but not limited to administrative, contractual, or legal remedies, as well as any applicable sanctions and penalties. Termination for cause and convenience are governed by the Termination and Related Remedies provision of the Contract.

(B) *[All contracts in excess of \$10,000]*

Termination. Termination for cause and convenience are governed by the Termination and Related Remedies provision of the Contract.

(C) *[Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3]*

Equal Employment Opportunity. Contractor agrees to comply with the Equal Opportunity Clause provided under 41 CFR 60-1.4(a) (Government Contracts) and 41 CFR 60-1.4(b) (Federal

Assisted Construction Contracts), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." Contractor further agrees to include this provision, including the Equal Opportunity Clause or a reference thereto, in any subcontracts it enters into pursuant to the Contract.

(D) [*When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities*]

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). Contractor must fully comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance therewith, Contractor must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

Copeland "Anti-Kickback" Act (40 U.S.C. 3145). Contractor must fully comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Pursuant to the Act, Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The County shall report all suspected or reported violations of the Copeland "Anti-Kickback" Act to the Federal awarding agency.

(E) [*Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers*]

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Contractor must fully comply with the Contract Work Hours and Safety Standard Act (40 U.S.C. 3701-3708), including 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Contract is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) [*If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a)*]

Rights to Inventions Made Under a Contract or Contract. For contracts entered into by the Contractor or the County with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the parties must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under

Government Grants, Contracts and Cooperative Contracts,” and any implementing regulations issued by the awarding agency.

(G) [*Contracts and subgrants of amounts in excess of \$150,000*]

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. All parties agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). All parties shall report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) [*For contract awards (see 2 CFR 180.220)*]

Debarment and Suspension (Executive Orders 12549 and 12689). Contractor attests that it is not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) [*For contracts exceeding \$100,000*]

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractor attests that it has filed the required certification under the Byrd Anti-Lobbying Amendment. Contractor attests that it has certified that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor further attests that it has disclosed, and will continue to disclose, any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

(J) [*All contracts*]

Procurement of recovered materials (2 CFR §200.322). All parties agree to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

ADDITIONAL FEMA REQUIREMENTS

[All contracts]

- i. Changes:** To be effective, any change to the Contract, including the alteration of any method, price, or schedule of work must be authorized pursuant to a written amendment executed by the parties.
- ii. Access to Records:** Contractor and its successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, information, facilities, and staff.
- iii. DHS Deal, Logo, and Flags:** Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- iv. Compliance with Federal Law, Regulations, and Executive Orders:** FEMA financial assistance will be used to fund the Contract. Contractor shall comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.
- v. No Obligation by Federal Government:** The United States Federal Government is not a party to the Contract and is not subject to any obligations or liabilities to County, Contractor, or any other party pertaining to any matter resulting from the contract.
- vi. Program Fraud and False or Fraudulent Statements or Related Acts:** Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to the Contract.