



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

SOLICITATION OF QUALIFICATIONS
COVER PAGE

SOQ Number: **7175-20**

SOQ Title: **Emergency Civil/Structural Engineering & Planning Services for Disaster Recovery**

SOQ Questions Due: October 30, 2020 – 2:00 p.m.

Submittal Due Date: November 13, 2020 – 2:00 p.m.

Email Address: purchasing@bouldercounty.org

Documents included in this package:

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



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

PROPOSAL INSTRUCTIONS

1. Purpose/Background

Specifications and a sample contract with a FEMA specific addendum are attached. The successful proposer shall execute the attached addendum as part of any contract with the county, and comply with all FEMA requirements set forth in that addendum.

Awarded vendors will be expected to enter into a 2-year continuing services contract with the county with the option to renew for three more one-year terms. No work is guaranteed by an award of a contract.

Specifications and a sample contract are attached.

2. Written Inquiries

All inquiries regarding this SOQ will be submitted via email to the Boulder County Purchasing Office at purchasing@bouldercounty.org on or before **2:00 p.m., October 30, 2020**. A response from the county to all inquiries will be posted and sent via email no later than **November 4, 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 email box only, listed below, for time and date recording on or before **2:00 p.m. Mountain Time on November 13, 2020**.

Please note that email responses to this solicitation are limited to a maximum of 50MB capacity. NO ZIP FILES OR LINKS TO EXTERNAL SITES 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 submittals.

Email purchasing@bouldercounty.org; identified as **SOQ 7175-20** in the subject line.

All SOQs 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 SOQ response is received on time at the stated email. Any responses received after due date and time will not be accepted.

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.



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

TERMS AND CONDITIONS

1. Proposers are expected to examine the 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. Up to three firms will be selected for a Continuing Services Contract.
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 email address prior to the time indicated in the "Request for Proposals."
8. The proposed price for any future task orders 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 SOQ documents will be made by Addendum. Interpretations, corrections and changes of the SOQ 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/package 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.



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

INSURANCE AND W9 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

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.

Professional Liability (Errors and Omissions)

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.

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. You are NOT required to include additional insured status until the time a contract is executed.

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 Insureds.

In regards to General Liability, Umbrella/Excess Liability, and Pollution Liability: If any or all of these coverages are required above, additional insured status will be required at the time a contract is executed.

If you require a waiver of insurance requirements you may request one in your response with an explanation.

W-9 REQUIREMENT

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



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

SPECIFICATIONS

Boulder County is requesting Statements of Qualifications from vendors for emergency civil/structural engineering services related to unanticipated future disasters and recoveries, in order to establish a list of pre-qualified consultants. Future emergencies/ disasters may include damage to County property as a result of flood, fire, rains, tornados, weather, or other unforeseen natural or manmade disasters. Future disasters may or may not be declared on the local, state or federal level. The type of work is described in more detail in this solicitation. Awarded vendors will be expected to enter into a 2-year continuing services contract with the County. No work is guaranteed by an award of a contract. Please note there are no specific projects or tasks requested at this time. The task order amounts are unknown at this time and will be determined on a project by project basis, if needed.

Services required must be performed in a manner that meets the requirements of Boulder County and any federal, state or local funding agency such as FEMA, FHWA, EPA, HUD/ CDBG-DR, NRCS, CWCB or others when required. The successful proposer shall execute a Boulder County contract that includes the attached addendum (as may be appropriate) or a substitute addendum more relevant to the funding agency, and comply with all requirements set forth in that addendum, and may be required to sign additional addendums should Boulder County secure funding from additional sources in the future. A sample continuing services contract with FEMA addendum is attached.

We are currently seeking qualifications from the prime Civil firm only. Subconsultant qualifications should not be included with your submittal. Please submit your qualifications for the services listed below that you are able to provide directly and include a list of the services listed below that you are able to provide via a subconsultant. Specific subconsultants may be added for work under Task Orders after specific Scopes of Work are negotiated and will be approved on a project-by-project basis. Proposers are not required to have the ability to provide all of the services listed below, either directly or by subconsultant.

The consultant team may perform a variety of engineering and planning functions. Work is to be conducted in close coordination with County Public Works, Parks and Open Space, and other staff and may include, but not limited to:

1. Completion of preliminary and detailed damage assessments, including type of damage, dimensions, photographs, GPS data, quantity estimates, etc.
2. Preparing preliminary estimates of construction, engineering and permitting costs of damaged facilities.
3. Civil Engineering services relative to County infrastructure and associated features such as roads, culverts, bridges, trails, creeks, ditches, ponds, trailheads, etc.
4. Structures inspections and preliminary/final structural engineering to repair disaster damage to County facilities.
5. Geotechnical investigation and analysis.
6. Creek restoration assessment, design, permit preparation, and construction management.
7. Providing floodplain related policy, technical and planning analysis and potential updates of floodplain mapping.
8. Assisting with floodplain development permits.
9. FIR/FOR/Final level engineering design as directed for repair and/or replacement of County facilities designed in accordance with accepted standards, including, but not limited to the Boulder County Multimodal Transportation Standards, CDOT, AASHTO, and funding agency requirements.
10. Environmental, historical, land use, and ROW clearances as required by local regulations or funding agencies.
11. Preparing bid documents as directed, for advertisement of improvements in a manner that meets local and funding agency documentation/ procurement requirements.
12. Public outreach and meeting facilitation.
13. Construction engineering, management and inspection services for construction projects, as directed.
14. Reporting to the Public Works Department, Parks and Open Space Department, or other county staff on engineering needs.
15. Providing general project management and technical assistance as needed.
16. Providing documentation, memos and reports as needed for FEMA (or other funding agency) requests for information relative to reimbursement.

All work will be directed via a Request for Proposal to the selected firms for each specific task. A Task Order will then be issued, on an as-needed basis, with a negotiated scope of work (SOW) as directed by the County staff.



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

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 Solicitation of Qualifications (SOQ) may be cause for rejection of the PROPOSAL.

Please respond to the following in the order listed below.

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

INCLUDED	ITEM
	Name, address, phone number and contact person for your company.
	A cover letter indicating your desire to be considered, firm/team organization, and any special considerations regarding your capability to serve Boulder County.
	A description of the firm and its capabilities. Please list which of the services listed in the “Specifications” section that your firm can provide directly, and which it can provide via a subconsultant.
	The names of the individuals who will be responsible for supervising and carrying out the work for each discipline being considered, and associated resumes.
	Examples of previous work that directly demonstrate the firm’s qualifications to work on these projects, and professional references.
	State your compliance with the Terms and Conditions in the Sample Contract contained in this BID. Specifically list any deviations and provide justification for each deviation.
	Insurance Certificate
	W-9
	SAM.gov Registration
	DUNS Number
	Signature Page
	Addendum Acknowledgement(s) (If Applicable)

Please limit your submittal to a total of 15 single sided pages. 11"x17" pages may be included but count as two pages.

DO NOT INCLUDE RATE SHEETS WITH THE STATEMENT OF QUALIFICATIONS. DOING SO WILL CAUSE YOUR PROPOSAL TO BE REJECTED.

ANY ADDITIONAL INFORMATION IS UNSOLICITED, WILL NOT BE CONSIDERED IN THE EVALUATION PROCESS, AND WILL RENDER THE SUBMITTAL AS UNRESPONSIVE.



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

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.

Firms will be selected based on their firm and individual qualifications, as outlined in their proposal and how they meet the criteria below (score up to four [4] points each category, relative percentages shown):

- 35%: Qualifications of personnel - How much experience does each/all team member(s) have with similar projects? Describe specific technical qualifications as well as experience managing or participating in the appropriate projects.
- 35%: Experience with County projects using County Multimodal Transportation standards and Storm Drainage Criteria Manual.
- 30%: Relevance of Past Projects - Demonstrated experienced with similar type and location of projects and experience with disaster recovery projects.

Boulder County will complete the selection process as quickly as possible and will be contacting each firm with the results shortly thereafter.

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
Qualifications of Personnel	35%@4
County Experience	35%@4
Relevance of Past Projects	30%@4
Total Possible	4



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

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:	

CONTRACTOR'S CERTIFICATION OF COMPLIANCE

Pursuant to Colorado Revised Statutes, § 8-17.5-101, et seq., as amended, as a prerequisite to entering into a contract for services with Boulder County, Colorado, the undersigned Contractor hereby certifies that at the time of this certification, Contractor does not knowingly employ or contract with an illegal alien who will perform work under the attached contract for services and that the Contractor will participate in the E-Verify Program or Department program, as those terms are defined in C.R.S. § 8-17.5-101, et seq., in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the attached contract for services.

CONTRACTOR:

Company Name

Date

Name (Print or Type)

Signature

Title

Note: Registration for the E-Verify Program can be completed at: <https://e-verify.uscis.gov/enroll/>.

ADDENDUM TO CONTRACT
FEDERAL EMERGENCY MANAGEMENT AGENCY'S GRANT PROGRAM
REQUIREMENTS FOR PROCUREMENT CONTRACTS

This is an addendum to the [CONTRACT NAME], RFP _____, Agreement between [CONTRACTOR] ("Contractor"), and Boulder County, (the "County").

The parties acknowledge that the above-referenced contract is subject to the provisions of 44 CFR § 13.36 and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.). This addendum is hereby expressly incorporated into the agreement between Boulder County and the Contractor. To the extent that the terms of the Agreement and this Addendum conflict, the terms of this Addendum shall control. Nothing in this Addendum shall be construed as making this Agreement contingent upon a Presidential disaster declaration or FEMA's approval or obligation of funds.

The following provisions are hereby added and incorporated into the above-referenced Agreement:

1. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE (*applicable to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 44 CFR§13.36(i)(3)*)

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

2. ANTI-KICKBACK ACT COMPLIANCE (*applicable to all contracts and subgrants for construction or repair; 44 CFR§13.36(i)(4)*)

Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).

3. ACCESS TO RECORDS

A. The Contractor agrees to provide the County, FEMA, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. 44 CFR§13.36(i)(10).

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any

means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date County makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the County, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 44 CFR §13.36(i)(11).

4. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers; 44 CFR §13.36(i)(6)*)

Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

5. NOTICE OF REPORTING REQUIREMENTS

A. Contractor acknowledges that it has read and understands the reporting requirements of FEMA stated in 44CFR§ 13.40 et seq., 13.50-13.52 and Part III of Chapter 11 of the United States Department of Justice’s Office of Justice Programs Financial Guide, and agrees to comply with any such applicable requirements.

B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions

6. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by FEMA; 44 CFR §13.36(i)(8)*)

A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the County and Contractor agree to take actions necessary to provide immediate notice and a detailed report to FEMA.

B. Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the County and Contractor agree to take the necessary actions to provide, through FEMA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 CFR, Part 401.

C. The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FEMA.

7. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

A. Contractor agrees that FEMA shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

(1) The copyright in any work developed with the assistance of funds provided under this Agreement;

(2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 44 CFR §13.34, 13.36(i)(8)- (9).

B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. ENERGY CONSERVATION REQUIREMENTS

A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 44 CFR § 13.36(i)(13).

B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

9. CLEAN AIR AND WATER REQUIREMENTS *(applicable to all contracts and subcontracts in excess \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year; 44 CFR §13.36(i)(12))*

A. Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

B. Contractor agrees to report each violation of these requirements to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to FEMA and the appropriate EPA regional office.

C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

10. TERMINATION FOR CONVENIENCE OF COUNTY *(applicable to all contracts in excess of \$10,000; 44 CFR §13.36(i)(2))*

A. County shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. County shall

exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective

- B.** Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by County and to minimize the liability of Contractor and County to third parties as a result of termination. All such actions shall be subject to the prior approval of the County. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by County.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At County's direction, assigning to County any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to County's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that County designates to be completed prior to the date of termination specified by County.

(7) Taking such action as may be necessary, or as the County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which County has or may acquire an interest.

- C.** Within 30 days after the specified termination date, Contractor shall submit to County an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Contractor, without profit, for all services and other work County directed Contractor to perform prior to the specified termination date, for which services or work County has not already tendered payment.

Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice. Taking such action as may be necessary, or as the County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which County has or may acquire an interest.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of County, that Contractor would have

made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to vendor, delivered to the County or otherwise disposed of as directed by the County.

D. In no event shall County be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by County, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

E. In arriving at the amount due to Contractor under this Section, County may deduct:

(4) All payments previously made by County for work or other services covered by Contractor's final invoice;

(5) Any claim which County may have against Contractor in connection with this Agreement;

(6) Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and

(7) In instances in which, in the opinion of the County, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and County's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

F. County's payment obligation under this Section shall survive termination of this Agreement.

11. TERMINATION FOR DEFAULT

Contractor's failure to perform or observe any term, covenant or condition of this document (Federal Emergency Management Agency's Emergency Management Performance Grant Program Requirements for Procurement Contracts) shall constitute an event of default under this Agreement.

A. Each of the following shall also constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from County to Contractor.

(2) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or

for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(3) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

- B.** On and after any Event of Default, County shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, County shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to County on demand all costs and expenses incurred by County in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. County shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between County and Contractor all damages, losses, costs or expenses incurred by County as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.
- C.** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy

12. SOCIOECONOMIC ENGAGEMENT

Contractor will take the following affirmative steps to engage small and minority firms, women's business enterprises, and labor surplus area firms.

- A. Place qualified small and minority business and women's business enterprises on sub-contractor solicitation lists.
- B. Assure that such firms are solicited whenever they are potential sources.
- C. Divide total requirements into smaller tasks or quantities to permit maximum participation by such firms.
- D. Establish delivery schedules which encourage participation by such firms.

Except as modified herein, all terms and conditions of the existing contract between the parties remain in full force and effect.

**IF THIS ADDENDUM IS INCORPORATED BY REFERENCE INTO THE CONTRACT,
THE PARTIES DO NOT NEED TO SIGN THE ADDENDUM, AND THE SIGNATURE
BLOCKS MAY BE REMOVED**

Accepted by **[CONTRACTOR]** on

(Date)

By: _____
TITLE

Accepted by **BOULDER COUNTY** on

, Chair