

Consulting
Health & Benefits

Client Information and RFP Instructions

BOULDER COUNTY



Introduction

Aon is assisting Boulder County in the evaluation of administrators for their COBRA and Flexible Spending Account (FSA) programs to be offered to its employees. This Request for Proposal (RFP) outlines the requirements that must be met and solicits data that will be used to complete this evaluation. In order for your organization's proposal to be considered, it is important that you follow the instructions outlined below and respond to this RFP by **May 19, 2022**.

The information in this request should be considered completely confidential. No portion of this document may be reproduced without prior written consent of Aon and Boulder County. The contents of the material should not be discussed with anyone outside of your organization. Under no circumstances should the client be contacted regarding this proposal, unless directed so by Aon, **and all communication about this solicitation must be in writing**. Any breach of this confidentiality clause may result in immediate disqualification of your organization from the selection process.

About BOULDER COUNTY

Boulder County currently has approximately 2,034 benefit eligible employees (full and part-time salaried). Census information has been provided as part of this RFP.

The county operates under IRS Section 125 guidelines in the administration of the health benefits package.

The county currently contracts with Rocky Mountain Reserve to administer their COBRA and Flexible Spending Account (FSA) program.

Headquarters for the county are in Boulder, CO 80302. Visit www.bouldercounty.org for general information about the county.

Current Environment

Boulder County currently offers 2 medical plans through Cigna: Hybrid PPO (PPO with FSA) and Consumer Choice Plan (HDHP with HSA). There are currently 1,757 employees enrolled in the medical plan with 994 of those enrolled in the Hybrid PPO and 763 enrolled in the Consumer Choice Plan.

The maximum contribution for the medical expense FSA for calendar year 2022 is \$2,850. The maximum contribution for the dependent care FSA for calendar year 2022 is \$5,000. There are 380 participants in the medical expense FSA with an average contribution of \$1,486.70. There are 53 participants in the dependent care FSA with an average contribution of \$3,259.61. There are 29 participants enrolled in both accounts.

For COBRA administration purposes, the county offers 1 dental plan with Delta Dental and 1 vision plan with VSP.

The county is looking for a single source vendor who can provide a rate guarantee of at least 3 years and responsive customer service.

Objectives of this Request for Proposal

Vendors should consider the following objectives for this Request for Proposal project:

- A focus on cost, credits, return-on-investment, and long-term guarantees
- A focus on customer service – ability to customize, respond quickly, have team depth, etc.
- Ability to provide a financially competitive proposal with a minimum 3-year rate/fee guarantee, but desired 5-year guarantee.
- Offer best-in-class member tools and excellent customer service to members;
- Offer administrative efficiencies for Boulder County human resources and finance

Vendor Content Inquiries

Vendor inquiries on the content of the RFP #7337-22 in the subject line, are due by **2:00 PM MDT on April 28, 2022**. Please respond in writing via email to purchasing@bouldercounty.org and cc: suzanne.kohlmann@aon.com. All vendor questions and responses will be assembled into a single document and released to all participating vendors by end of day **May 5, 2022**. Questions should be specific and detailed in order to provide complete responses to all RFP sections. All questions will remain anonymous so that no organization will be identified as asking a particular question.

Proposal Submission

- To be considered a qualified candidate, your response to this RFP must:
 - Include a cover letter clearly spelling out deviations from requested services. Please note that plan designs, all benefit provisions, and policy particulars must be replicated to match the plan coverages and procedures. Unless indicated otherwise, your proposal will be interpreted as a duplication of the plan benefits, procedures, and policies as set forth in this RFP;
 - Respond clearly and concisely to all the financial sections of the RFP;
 - Comply with all specifications or clearly indicate where and why your proposal deviates;
 - Respond clearly and concisely to all questions in the questionnaire section without referring us to preprinted materials as your response;
 - Be received electronically by Boulder County Purchasing & Aon **no later than 2:00 PM MDT on May 19, 2022**. Bids must be submitted via secure email link to purchasing@bouldercounty.org and cc: suzanne.kohlmann@aon.com. (Note: This submission format via your secure system is required due to the limit on file size for materials sent to the county in other ways. The County needs to be able to download your bid materials in order to bypass email size limits.) The subject line should read “RFP #7337-22” Bid Submission by ___(Carrier Name)___”

Other Bidding Instructions

- Assume a January 1, 2023 effective date.
- All fees should assume no commissions.
- Respond clearly and concisely to all questions in the spaces provided. Do not reference an attachment or an answer to another question within the RFP in your response, unless an attachment is requested. Such answers will be considered incomplete.

Timetable of Activities

It is critical that the following timetable be met. Your ability to meet these deadlines will be considered in the analysis of your capabilities.

| RFP Timeline | Due Date |
|--|-------------------------------|
| RFP posted for bidders (questionnaire, pricing templates, etc.) | 04/20/2022 |
| Carriers submit questions on RFP | 04/28/2022 |
| Procurement posts responses to carrier questions | 05/05/2022 |
| RFP responses due from carriers | 05/19/2022 |
| Aon/Boulder County meeting to review RFP results (<i>tentative</i>) | Week of June 13 th |
| Finalist meetings held with carriers, if required (<i>tentative</i>) | Week of June 27 th |

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 Offeror 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 offeror.

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.

Best and Final Negotiations

Best and final negotiations are not guaranteed. Bidders must understand that pricing will be a piece of what determines who will be finalists, and thus strong pricing should be put forth in the initial bid. If a best and final is requested, this will take place prior to the bid being awarded.

Contacts

Boulder County Purchasing purchasing@bouldercounty.org

Attachments

- Items for Completion
 - Workbook including rate schedule and questionnaires
- Documents to be submitted as separate attachments:
 - Company Rating
 - Sample Reporting
 - Workbook including Financials and Questionnaires
- Appendices
 - A. Procurement Guidelines

**APPENDIX A
PROCUREMENT GUIDELINES 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 bidder's risk.
2. Each bidder shall furnish the information required in the Request for Proposals.
3. The Contract/Purchase Order will be awarded to that responsible bidder 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 bids 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 shall be withdrawn for a period of thirty (30) days subsequent to the opening of bids without the consent of the County Purchasing Agent or delegated representative.
6. A signed purchase order or contract furnished to the successful bidder 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 appropriate email box prior to the time indicated in the "Request for Proposals."
8. The proposed price shall 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 shall 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 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 or resulting contract will be clearly stated in the proposal and contract 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. Proposals that do not properly identify confidential/proprietary information may be released in their entirety. Pricing totals contained in a proposal are not considered confidential.

The Boulder County Attorney's Office retains sole authority for determining whether the Colorado Open Records Act requires or permits Boulder County to disclose proposal or bid documents, or any information contained therein, pursuant to an open records request.

11. Boulder County promotes the purchase/leasing of energy efficient, materials efficient and reduced toxic level products where availability, quality and budget constraints allow. Bidders 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. Bidders 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.

12. Pursuant to Colorado law (House Bill 1292), in any bidding process for public works in which a bid is received from a non-resident bidder who is from a state that provides a percentage bidding preference, a comparable percentage disadvantage shall be applied to the bid of that bidder. Bidders may obtain additional information from the Department of Personnel's website: <http://www.colorado.gov/dpa/>.



INSURANCE AND W-9 REQUIREMENTS

RFP #7337-22

COBRA and Flexible Spending Accounts (FSA) Administration

Commercial General Liability

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.

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.

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.

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

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.



W-9 REQUIREMENT

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



SUBMITTAL SECTION

RFP #7337-22

COBRA and Flexible Spending Accounts (FSA) Administration

Please submit the following information in the order listed below:

1. Signature Page (below)
2. Workbook in Excel format
3. Names and address of the Partners and Subcontractors, if applicable
4. Please submit a copy of any contract you would require to be executed in this process, or submit a redlined version of the county contract included below



SIGNATURE PAGE

RFP #7337-22

COBRA and Flexible Spending Accounts (FSA) Administration

Failure to complete, sign and return this signature page with your proposal may be cause for rejection.

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

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 Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic, 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 for completion of any Work performed in the prior calendar month. 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**. 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 (Additional Time only):** 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 by sending a written notice of extension to Contractor. An extension of time to complete the Work does not entitle Contractor to additional compensation from County.
7. **Extension of Contract Term (Additional Time and 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 may 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 officials and appointed department heads, 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. Nothing contained in this Contract or the **Contract Documents** is intended to limit or restrict the indemnification rights or obligations of any Party under this provision, or damages available for breaches of the obligations herein.

10. **Nondiscrimination:** Contractor will comply with 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. None of Contractor, its agents, personnel or subcontractors are employees 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**

a. **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 breaching Party does not cure the breach, at its sole expense, as reasonably determined by the non-breaching Party in its sole discretion, 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.

b. **Non-Appropriation:** The other provisions of this Contract notwithstanding, 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.

c. **Convenience:** In addition to any other right to terminate under this Section 13, County may terminate this Contract, in whole or in part, for any or no reason, upon seven (7) days' advance written notice to Contractor.

14. **Contractor Obligations upon Termination or Expiration:** By the **Expiration Date** or effective date of termination, if earlier, Contractor must (1) remove from County property all of its personnel, equipment, supplies, trash and any hazards created by Contractor, (2) protect any serviceable materials belonging to the County, and (3) take any other action necessary to leave a safe and healthful worksite. Any items remaining on County property after the Expiration Date or the effective date of termination, if earlier, will be deemed abandoned by Contractor.

15. **Payable Costs in Event of Early Termination:** If County terminates this Contract before the **Expiration Date**, Contractor's payments (and any damages associated with any lawsuit brought by Contractor) are limited to only (1) payment for Work satisfactorily executed and fully and finally completed, as determined by County in its sole discretion, prior to delivery of the notice to terminate, and (2) the reasonable and actual costs Contractor incurred in connection with performing the Work prior to delivery of the notice to terminate. Contractor explicitly waives all claims it may have against the County for any other compensation, such as anticipatory profits or any other consequential, special, incidental, punitive or indirect damages.

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 (in addition to any other remedies provided by law or in this Contract), 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 full and final 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 fully and finally 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 may 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.): *The phrase "unauthorized worker" as used in this provision shall have the same and intended meaning as "illegal alien" as such phrase is used in 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 unauthorized worker 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 unauthorized worker 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 unauthorized worker 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 unauthorized worker, 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 unauthorized worker; and (b) terminate the subcontract if, within three (3) days of receiving notice hereunder, subcontractor does not stop employing or contracting with the unauthorized worker; 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 unauthorized worker. 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. § 24-72-200.1, 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 is solely responsible for ensuring that its performance under this Contract and the Work itself will comply with all Federal, State, and local laws, regulations, ordinances and codes. County approval of the Work or any aspect of Contractor's performance, such as plans, designs, or other Contractor-drafted documents, shall not be interpreted to mean that Contractor has satisfied its obligations under this Section.
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. Limitation of Liability: COUNTY SHALL NOT BE LIABLE TO CONTRACTOR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS CONTRACT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. COUNTY'S AGGREGATE LIABILITY, IF ANY, ARISING FROM OR RELATED TO THIS CONTRACT, WHETHER IN CONTRACT, OR IN TORT, OR OTHERWISE, IS LIMITED TO, AND SHALL NOT EXCEED, THE AMOUNTS PAID OR PAYABLE HEREUNDER BY COUNTY TO CONTRACTOR. ANY CONTRACTUAL LANGUAGE LIMITING CONTRACTOR'S LIABILITY SHALL BE VOID.

42. Legal Interpretation. Each Party recognizes that this Contract is legally binding and acknowledges that it has had the opportunity to consult with legal counsel of its choice about this Contract. The rule of construction providing that any ambiguities are resolved against the drafting Party will not apply in interpreting the terms of this Contract.

43. No Suspension or Debarment: Contractor certifies, and warrants for the Contract Term, that neither it nor its principals nor any of its subcontractors are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal or State department or agency. Contractor shall comply, and shall require its subcontractors to comply, with subpart C of 2 C.F.R. § 180.

44. Insurance: Prior to commencing the Work, Contractor will provide a Certificate of Insurance to the County demonstrating adequate insurance coverage as required by this Section. 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. 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.*

b. 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.

c. 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.

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

e. 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.

f. 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.

g. Requirements: 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

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.

ii. 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.

iii. 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.

iv. 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

[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: | | | |