



**Boulder County Purchasing**

**1325 Pearl Street**

**Boulder, CO 80302**

[purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org)

**SOLICITATION OF QUALIFICATIONS  
COVER PAGE**

---

SOQ Number: **7386-22**

SOQ Title: General Contracting Construction Services –  
Alternative Sentencing, Central Plant & Jail  
Intake

SOQ Questions Due: October 28, 2022 – 2:00 p.m.

Submittal Due Date: November 10, 2022 – 2:00 p.m.

Email Address: [purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org)

Documents included in this package:

- SOQ Instructions
- Terms and Conditions
- Specifications
- Insurance and W-9 Requirements
- Submittal Checklist
- Evaluation Criteria
- Signature Page
- Non-Disclosure Agreement

**In order to receive the documents associated with this bid, please sign and return the NON-DISCLOSURE AGREEMENT located on the last page of this document to [purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org).**



**Boulder County Purchasing**  
**1325 Pearl Street**  
**Boulder, CO 80302**  
[purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org)

**SOQ**  
**INSTRUCTIONS**

---

**1. Purpose/Background**

The Boulder County Public Works Department, Building Services Division is seeking to pre-qualify General Contractors (GC) for construction services required to complete the Boulder County Alternative Sentencing Facility (ASF) (includes the Jail Central Plant Expansion) and Jail Intake Expansion located at 3200 Airport Road, Boulder, CO 80301.

A selection committee will review all submissions received and choose three (3) General Contractors, based on the criteria outlined in the Specifications and Submittal Section. The three (3) GCs selected will receive Bid documents associated to the ASF, Central Plant, and Intake Expansion scopes.

A rough schedule of bidding events and additional information is provided in the Specifications section of this SOQ.

**2. Written Inquiries**

All inquiries regarding this SOQ will be submitted via email to the Boulder County Purchasing Office at [purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org) on or before 2:00 p.m. **October 28, 2022**. A response from the county to all inquiries will be posted and sent via email no later than **November 4, 2022**.

**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 10, 2022**. **Vendors must answer whether line-item pricing information submitted with a bid is confidential or closely held.**

**Please note that email responses to this solicitation are limited to a maximum of 50MB capacity.**

**NO ZIP FILES OR LINKS TO EXTERNAL SITES WILL BE ACCEPTED. THIS INCLUDES GOOGLE DOCS AND SIMILAR SITES. ALL SUBMITTALS MUST BE RECEIVED AS AN ATTACHMENT (E.G. PDF, WORD, EXCEL).**

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

Email [purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org); identified as **SOQ #7386-22** 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 location(s). Any responses received after due date and time will be returned to the proposer.

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

Contractors and their employees, subcontractors, and agents must comply with all federal, state, and local laws, regulations, ordinances, orders, and codes, as well as Boulder County policies, guidelines, and protocols.

**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](mailto:purchasing@bouldercounty.org)

## **TERMS AND CONDITIONS**

---

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

contract itself. Confidential/proprietary information should be readily identified, marked and/or separated from the rest of the bid. Co-mingling of confidential/proprietary and other information is NOT acceptable. Vendors must answer whether line-item pricing information submitted with a bid is confidential or closely held. Bids that do not identify confidential/proprietary information may be released in their entirety. Pricing totals contained in a bid 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 and products with low toxicity levels when 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.
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/>.



**Boulder County Purchasing**  
**1325 Pearl Street**  
**Boulder, CO 80302**  
[purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org)

## **SPECIFICATIONS**

---

### **1.0 Introduction:**

Boulder County Building Services (“BCBS” and/or “Owner”) has received approval from the Board of County Commissioners to construct a new 54,800-sf two-story Alternative Sentencing Facility (ASF), on the northeast corner of the Jail site located at 3200 Airport Road, Boulder CO 80301.

The new ASF will contain a Kitchen, Laundry, Staff Offices, Control Stations, and Dormitories. Hydronic heating and cooling will be supplied underground from the Jail’s mechanical systems. A 2,150-sf addition of the Jail’s mechanical room is included in this scope to serve as a Central Plant for the site, critical for completion of the ASF.

The Jail Intake Expansion can start concurrently or directly following the start of the ASF/Central Plant. This proposed 30,560-sf two-story expansion shall connect to the existing Booking space, southeast corner of the Jail, and expand east. In this expansion the 1<sup>st</sup> floor will provide for a safer, more organized process flow of inmates entering, with the 2<sup>nd</sup> floor containing holding cells and/or additional housing prior to inmates entering the Jail’s separate housing.

BCBS will select at least three (3) GC firms per county purchasing policy through this SOQ process. After SOQ award detailed design documents with additional bidding instructions will be sent to each GC for a competitive BID process.

### **2.0 Design Team:**

BCBS has retained the following consulting firms to design the Project (collectively the “Design Team”):

- |                          |                                   |
|--------------------------|-----------------------------------|
| ▪ Architect of Record    | Reilly Johnson Architecture       |
| ▪ MEP Engineer of Record | BCER Engineering                  |
| ▪ Structural Engineer    | Martin/Martin Consulting Engineer |
| ▪ Civil Engineers        | Drexel, Barrel, & Co              |
| ▪ Landscaping            | Norris Design                     |

Other consultants may be added as the Design Team and Owner deem appropriate.

Per section 2 of the SOQ Instructions:

Please refrain from contacting the Design Team directly; all inquiries regarding this SOQ shall be submitted via e-mail to the Boulder County Purchasing Office at [purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org).

### **3.0 BCBS In-house Labor Scope:**

Boulder County Building Services has in-house crews that perform a variety of construction and electrical services. Please be aware that BCBS may be working as a subcontractor, maintaining the schedule and any safety requirements established by the GC (selected in the BID process), in the following capacities:

- Electrical Service/Transformers
- Emergency Generator
- Lighting/lighting Controls/Electrical Branch circuit wiring
- Data distribution/fiber
- Fire Alarm
- A/V/Camera wiring
- Card Access
- HVAC Controls
- Cabinet/millwork installation
- Building and installation of laminate countertops
- Door and door hardware install
- Bathroom ADA accessories
- Finish protection (corner guards)
- Fire cabinet installation
- System furniture
- Furniture installations (lockers, beds)

### **4.0 Tentative Schedule:**

- Bid documents for ASF, CP & Intake available Nov/Dec 2022.
- Award GC for construction of ASF, CP & Intake January 2023,
- Mobilize February 2023
- Start construction March 2023.
- Sequencing of ASF, Central Plant and Intake buildings can proceed concurrently; to be reviewed with awarded GC
- Completion Q4 2024

The above dates are subject to change by BCBS at their discretion.

### **4.0 SOQ Attachments:**

The SOQ Documents include items listed below. Please notify Boulder County Purchasing immediately if you are missing any noted information below:

- VM1.2 - Context Improvement Map, Elevations, Renderings (8 pages)

**In order to receive the documents associated with this bid, please sign and return the NON-DISCLOSURE AGREEMENT located on the last page of this document to [purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org).**



**Boulder County Purchasing**  
**1325 Pearl Street**  
**Boulder, CO 80302**  
[purchasing@bouldercounty.org](mailto:purchasing@bouldercounty.org)

## **INSURANCE AND W-9 REQUIREMENTS**

---

### **INSURANCE REQUIREMENTS**

#### **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.

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.

#### **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.

#### **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.

#### **Umbrella / Excess Insurance**

Umbrella/Excess Liability insurance in the amount \$2,000,000.00, following form.

#### **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.

### **Pollution Liability**

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.

**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 regard 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.**

**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.**

**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](mailto: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.

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

INCLUDED	ITEM
	Name of your company / organization
	Type of organization (Corporation, Partnership, etc.)
	Address
	Name and Address of the Partners and Subcontractors if applicable
	Contact Person(s)
	Telephone and email
	(1) Letter of Interest
	(2) Local Organization
	(3) Similar Project Experience
	(4) Safety
	(5) Special Resources and Self
	(6) Financial Information
	(7) Litigation History
	(8) Additional Relevant Information
	Submit three references for similar projects your company has completed within the last three years and contact information
	Insurance Certificate
	W-9
	Signature Page
	Addendum Acknowledgement(s) (If Applicable)

**THIS QUESTION MUST BE ANSWERED AS PART OF YOUR BID PACKAGE:** Proposer will answer Yes or No indicating compliance:

YES OR NO	ITEM
	Do you customarily keep line-item pricing information, such as the information being submitted with this proposal, confidential or closely-held?

The following information (numbered) expands on the corresponding items above:

(1) Letter of Interest

Provide a letter confirming your organization’s interest in providing CM/GC services for construction of the Project. Include the name, address, phone numbers, email and any other contact information for the person who will act as your primary contact during the proposal process. This letter should concisely explain the structure of your team, including an overview of the management structure of the organization including the names, roles and relationships of the key members of your senior management team. Individuals presented are expected to work on the project through its completion.

(2) Local Organization

Please provide a brief overview of your firm’s Colorado operations. Indicate the number of permanent employees in your local office, name of the most senior local manager, address and phone number of the local office, number of years in Colorado and significant projects. It is required that the contractor possesses all necessary licenses to work in the City of Boulder and Boulder County.

(3) Similar Project Experience

Please provide an overview of your organization’s construction experience working in occupied buildings, detention centers, secured facilities, and cite three or four similar size and type of projects, working preferably in the Boulder County area including:

- a. A one- or two-page outline with examples of how your preconstruction department provided value to the project.
- b. Owner name and contact information including email address
- c. Size and cost of project and any unique project challenges
- d. LEED Certification will not be a requirement of the project: however, Boulder County has a strong commitment to sustainability and this project will be built to LEED Gold standard.
- e. Completion date
- f. Contracting method
- g. Name of architect and contact information

(4) Safety

A description of your organization’s approach to managing safety on construction projects including modification rate (EMR) for the last three years.

(5) Special Resources and Self-Performed work

A description of any special resources or capabilities your organization could employ on the Project that would enhance the value your organization would bring to the Project.

Provide a list of work that will be self-performed by organizations own employees.

(6) Financial (2 pages maximum)

Information on your organizations financial position including:

- a) Colorado annual volume for each of the last five years.
- b) Bonding capacity.
- c) Name and contact information for your organization's surety.
- d) Description of the insurance coverages your organization could provide.
- e) Name of your insurance carriers.

In addition to the above, the Owner may require audited financial statements as part of the evaluation of the submission.

(7) Litigation History

A list of all lawsuits and claims your organization is currently involved in or has been party to in the last five (5) years. Briefly describe the nature of each action and its disposition or status.

(8) Additional Relevant Information

Please add any additional information you feel may be relative. This may include LEED expertise, working in zero-lot line conditions, demolition and shoring expertise, working in occupied buildings, etc.

Selection Process

Each proposal will be independently reviewed by a team made up of BCBS staff members and the project designer. The evaluation team will analyze each firm's qualifications, professional content, fiscal strength and experience with similar projects and clients to select the three (3) firms who will be invited to respond to a formal BID.

- The BID will request transparency, breaking out pricing into CSI categories, listing all applicable GCs, bonds, permit fees, taxes, allowances, contingencies, overhead and profit.

Contract

BCBS anticipates using Document A101™ – 2017 Standard Form of Agreement Between Owner and Contractor (with certain County-required terms included) where the basis of payment is a Stipulated Sum, or its equivalent



**Boulder County Purchasing**  
**1325 Pearl Street**  
**Boulder, CO 80302**  
[purchasing@bouldercounty.org](mailto: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. Final evaluation and selection may be based on, but not limited to, any or all the following:

- SOQ Submission Presentation & Inclusion of Requested Items
- Organization Location & Staffing
- Similar Project Experience
- Safety
- Special Resources and Self-performed Capacity
- Financial Information
- Litigation History

**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:**

<b>Description</b>	<b>Points</b>
SOQ Submission Presentation & Inclusion of Requested Items	10
Organization Location & Staffing	20
Similar Project Experience	30
Safety	10
Special Resources and Self-performed Capacity	10
Financial Information	10
Litigation History	10
<b>Total Possible</b>	<b>100</b>



**Boulder County Purchasing**  
**1325 Pearl Street**  
**Boulder, CO 80302**  
[purchasing@bouldercounty.org](mailto: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.

## NON-DISCLOSURE AGREEMENT

This **NON-DISCLOSURE AGREEMENT** (“**Agreement**”) is entered into as of the Effective Date identified below, by and between Boulder County (“**Boulder**”), and the party identified below (“**Recipient**”).

<b>Effective Date:</b>	October 18, 2022
<b>Recipient:</b>	<b>Name:</b> _____ <b>State of Incorporation:</b> _____ <b>Address:</b> _____
<b>Purpose:</b>	Evaluating the Confidential Information internally to respond to Boulder County SOQ #7386-22 and to determine whether to enter into a contemplated transaction or agreement with Boulder.
<b>Confidential Information:</b>	<u>All information and data disclosed, provided, or otherwise made available by or on behalf of Boulder, provided only that it is marked as confidential or proprietary, is identified as confidential or proprietary at the time of disclosure or within 30 days thereafter, or is disclosed in circumstances that would lead a reasonable person to believe such information is confidential or proprietary, including all business, technical, employee, customer, and financial information, software (including source and object code), data and datasets, business methods, techniques, concepts, systems, procedures, know-how, inventions, and other information of every kind that relates to Boulder, irrespective of the form or format of communication.</u>

**1.** This Agreement may be terminated by either party at any time upon 30 days written notice to the other party. Recipient’s obligations under this Agreement will survive any termination of this Agreement, and will continue to be binding upon the Recipient (and its heirs, successors and assigns) for a period of 10 years from any such termination, provided that (1) the Recipient’s obligations under this Agreement shall not terminate with respect to any portion of the Confidential Information that constitutes "trade secrets" under applicable law for so long as such Confidential Information constitutes trade secrets under applicable law, and (2) any such termination shall not affect the rights or remedies of Boulder or restrict or otherwise limit any cause of action or claim arising from Recipient’s breach of or failure to perform any duty or obligation under this Agreement prior to such termination.

**2.** Recipient agrees to: (1) maintain the Confidential Information in strict confidence; (2) take all precautions to protect such Confidential Information as Recipient employs with respect to its most confidential materials, but in no case less than reasonable and appropriate measures given the nature and sensitivity of the Confidential Information; (3) not use or reproduce the Confidential Information in any manner, except for the sole purpose of accomplishing the Purpose set forth above; (4) not disclose any such Confidential Information, or any information derived therefrom, to any third party, except for those of its own employees who have a legitimate “need to know” for purposes of accomplishing the Purpose, and who have agreed to be bound to terms not less protective of the Confidential Information than those in this Agreement; and (5) not reverse engineer, decompile, or otherwise attempt to

derive the composition or underlying information, structure or ideas, of any such Confidential Information.

**3.** Recipient’s obligations under Section 2 will cease to apply as to any Confidential Information (and only as to such Confidential Information) that Recipient can document: (1) was already lawfully known to Recipient at the time of disclosure by Boulder; (2) is disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; or (3) is, or through no fault of Recipient has become, generally available to the public. In addition, Recipient will be allowed to disclose Confidential Information solely to the extent that such disclosure is required by law or by the order or a court of similar judicial or administrative body, *provided that*, Recipient notifies Boulder in writing and in advance of such required disclosure, and cooperates with Boulder in any lawful action to contest or limit the scope of such required disclosure.

**4.** Immediately upon termination of this Agreement, or upon request by Boulder at any time, Recipient will return to Boulder, or, at the request of Boulder, will destroy, all Confidential Information and all documents or media containing any such Confidential Information and any and all copies or extracts thereof. Upon the request of Boulder, an officer or director of Recipient will certify in writing to such return or destruction.

**5.** Recipient recognizes and agrees that: (1) nothing contained in this Agreement shall be construed as granting Recipient any property rights, by license or otherwise, to any Confidential Information, or to any intellectual property rights therein or related thereto; (2) the Confidential Information, and any reproductions and summaries thereof

shall remain the property of Boulder; (3) any reproductions or summaries of the Confidential Information shall contain any and all confidential or proprietary notices or legends that appear on the original; and (4) Recipient shall not make, have made, use or sell for any purpose any product or other offering using, incorporating or derived from the Confidential Information.

**6.** Recipient acknowledges and agrees that nothing herein: (1) requires the disclosure of any Confidential Information, which shall be disclosed, if at all, solely at the option of Boulder; or (2) requires Boulder to proceed with any transaction or agreement in connection with which Confidential Information may be disclosed.

**7.** Recipient acknowledges and agrees that due to the unique nature of the Confidential Information, there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or any unauthorized use or release of any Confidential Information would result in irreparable harm to Boulder, and therefore, that upon any such breach or any threat thereof, Boulder, in addition to whatever remedies that Boulder might have at law, shall be entitled to obtain appropriate equitable relief without the need to post a bond. Further, Boulder shall be entitled to be indemnified by Recipient from any loss or harm, including, without limitation, attorneys' fees, in connection with any breach or enforcement of Recipient's obligations hereunder or the unauthorized use or release of any such Confidential Information. Recipient shall immediately notify Boulder upon discovery of any loss or unauthorized use or release of any Confidential Information.

**8.** All duties, obligations, rights, and remedies hereunder are cumulative, and not exclusive, of any and all duties, obligations, rights, and remedies existing at law or in equity. In addition to the duties, obligations, rights, and remedies hereunder, Boulder shall be entitled to avail itself of all such other duties, obligations, rights, and remedies as may now or hereafter exist, including the Uniform Trade Secrets Act and similar statutes and rules of law pertaining to trade secrets and confidential and proprietary information.

**9.** RESERVED.

**10.** This Agreement will be governed by the laws of the State of Colorado, without regard to the conflicts of law provisions thereof. Each party irrevocably submits to the exclusive jurisdiction of the state and federal courts for Boulder, Colorado with respect to all disputes and other matters relating to this Agreement.

**11.** Recipient may not assign or transfer this Agreement or any rights or obligations under this Agreement without the express prior written consent of Boulder, and any attempted or purported assignment in violation of the foregoing will be null and void and without force or effect.

**12.** All notices or reports permitted or required under this Agreement shall be in writing, delivered by personal

delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, 5 days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth in the introductory paragraph of this Agreement or such other address as either party may specify in writing.

**13.** This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the subject matter hereof. In the event that any of the provisions of this Agreement will be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. The prevailing party in any action to enforce this Agreement will be entitled to costs and attorneys' fees. No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver. The words "include," "includes" and "including" will mean "include," "includes," or "including," in each case, "without limitation." This Agreement may be executed in one or more counterparts, duplicate originals, or facsimile versions (provided that the facsimile versions are confirmed within a reasonable time by signed originals), each of which will be deemed an original, but all of which together will constitute one and the same instrument.



The parties have executed this Agreement as of the Effective Date.

**FOR BOULDER:**

**FOR RECIPIENT:**

\_\_\_\_\_

\_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_