

STA08PUB

TYPE OF RECORD:	NON-PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS
SUBJECT/PROJECT:	GRAND JUNCTION PUBLIC SAFETY BUILDING ENERGY IMPACT ASSISTANCE PROGRAM (EIAF#6031)
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2008
EXPIRATION DATE:	03/31/09
DESTRUCTION DATE:	01/16

Contract Routing #	01219
Vendor #	846000592 C
CFDA #	N/A

**GRANT CONTRACT
ENERGY AND MINERAL IMPACT ASSISTANCE PROGRAM**

THIS CONTRACT, made by and between the State of Colorado for the use and benefit of the Department of Local Affairs, 1313 Sherman Street, Denver, Colorado 80203 hereinafter referred to as the State, or the Department, and the City of Grand Junction, 250 North 5th Street, Grand Junction, Colorado 81501, hereinafter referred to as the Contractor.

WHEREAS, authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this Contract in Fund Number 153, Appropriation Code Number 128, Org. Unit FAA0, GBL PMER, Contract Encumbrance Number F08MLG6031; and

WHEREAS, required approval, clearance and coordination have been accomplished from and with appropriate agencies; and

WHEREAS, the State desires to assist political subdivisions and state agencies of the State of Colorado that are experiencing social and economic impacts resulting from the development, processing, or energy conversion of minerals or mineral fuels; and

WHEREAS, pursuant to sections 34-63-102, C.R.S., the Local Government Mineral Impact Fund has been created, which fund is administered by the Department of Local Affairs, herein referred to as the "Department" through the Energy and Mineral Impact Assistance program; and

WHEREAS, pursuant to section 34-63-102(5)(a)(I), C.R.S., the Executive Director of the Department is authorized to make grants from the Local Government Mineral Impact Fund to political subdivisions, including public schools, for the planning, construction and maintenance of public facilities and for public services; and

WHEREAS, the Contractor, a political subdivision or state agency eligible to receive Energy and Mineral Impact Assistance funding, has applied to the Department for assistance for architectural and engineering services for the design of a proposed Public Safety Building that will include space needs for law enforcement and judicial operations, for the City of Grand Junction, Colorado (Contractor), as further described in the attached Exhibit A, herein referred to as the "Project"; and

WHEREAS, the Executive Director of the Department desires to distribute said funds pursuant to law; and

WHEREAS, the Executive Director wishes to provide assistance in the form of a grant from the Local Government Mineral Impact Fund to the Contractor for the Project upon mutually agreeable terms and conditions as hereinafter set forth;

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this Contract, the State and the Contractor agree as follows:

1. **Scope of Services.** The Contractor shall do, perform, and carry out, in a satisfactory and proper manner, as determined by the State, all work elements as indicated in the "Scope of Services" section of Exhibit A, attached hereto and incorporated by reference herein.
2. **Responsible Administrator.** The performance of the services required hereunder shall be under the direct supervision of Kathy Portner, an employee or agent of the Contractor who is hereby designated as the "Responsible Administrator" of the Project. At any time, the Contractor may propose, in writing, and seek the State's approval of a replacement Responsible Administrator, in accordance with paragraph 8.b.ii) of this Contract. The State, in its sole discretion, may direct that Project work be suspended in the event the current Responsible Administrator ceases to serve as such prior to the approval by the State of a replacement Responsible Administrator.
3. **Time of Performance.** This Contract shall become effective upon approval by the State Controller or designee (the "Effective Date") and extend through the completion date set forth in the "Time of Performance" section of Exhibit A. Performance of this Contract shall commence as soon as practicable after the Effective Date of this Contract; provided however, that the Contractor shall not be entitled to payment for any performance rendered before the Effective Date and shall not be eligible for reimbursement of any expenses incurred before the Effective Date. The Contractor shall undertake and perform its obligations hereunder as set forth in Exhibit A. The Contractor agrees that time is of the essence in the performance of its obligations under this Contract.

4. Authority to Enter into Contract and Proceed with Project. The Contractor represents and warrants that it possesses the legal authority to enter into this Contract and has taken all actions required to exercise such authority and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Contractor to its terms. The person signing and executing this Contract on behalf of the Contractor does hereby warrant and guarantee that he/she has full authorization to execute this Contract. In addition, the Contractor represents and warrants that it currently has the legal authority to proceed with the Project.

Furthermore, if the nature or structure of the Project is such that a decision by the electorate is required, the Contractor represents and warrants that it has held such an election and secured the voter approval necessary to allow the Project to proceed.

5. Payment of Funds: Grant. In consideration for the work and services to be performed hereunder, the State agrees to provide to the Contractor a grant from the Local Government Mineral Impact Fund in an amount not to exceed FIVE HUNDRED THOUSAND AND XX/100 Dollars (\$500,000.00). The method and time of payment of such grant funds shall be made in accordance with the "Distribution Schedule" set forth in Exhibit A.

The Contractor shall use the funds provided by the State under this Contract solely for the purposes set forth in Exhibit A.

6. Refund of Excess Funds to the State.

a) Any State funds paid to the Contractor and not expended in connection with the Project shall be remitted by the Contractor to the State within thirty (30) days of either (i) the completion of the Project or (ii) a determination by the State, in its sole discretion, that the Project will not be completed, whichever occurs first. Any State funds not required for completion of the Project shall be de-obligated by the State.

b) It is expressly understood that if the Contractor receives funds from this Contract during any fiscal year in excess of its spending limit for such fiscal year, the Contractor shall refund all excess funds to the State within thirty (30) days of the later of (i) the receipt of such funds or (ii) the determination of such excess.

c) Under no circumstances shall unexpended or excess funds received by the Contractor under this Contract be refunded or paid to any party other than the State.

7. Financial Management and Budget. At all times from the Effective Date until completion of the Project, the Contractor shall maintain properly segregated accounts of State funds, matching funds, and other funds associated with the Project. All receipts and expenditures associated with the Project shall be documented in a detailed and specific manner, in accordance with the "Budget" section of Exhibit A. The Contractor may adjust individual budgeted expenditure amounts without approval of the State; provided that no transfers to or between administration categories are made; and provided further, that cumulative budgetary line item changes do not exceed the lesser of ten percent (10%) of the total budgeted amount or Twenty Thousand Dollars (\$20,000.00). All other budgetary modifications must be approved by the State pursuant to paragraph 8 of this Contract. Matching funds, if required, shall be expended by the Contractor on the Project in accordance with the requirements set forth in the "Budget" section of Exhibit A.

8. Modification and Amendment.

a) **Modification by Operation of Law.** This Contract is subject to such modifications as may be necessitated by changes in federal or state law or their implementing regulations. Any such required modifications automatically shall be incorporated into and be part of this Contract on the effective date of such modification, as if fully set forth herein.

b) **Modification by State.**

i) **Option Letter.** The State unilaterally may extend the term for performance of this Contract for up to one (1) additional year on the same terms and conditions specified in this Contract and Exhibit A. The State may exercise the option by written notice to the Contractor within thirty (30) days prior to the end of the current Contract term, in a form substantially equivalent to Exhibit B-1 attached hereto and incorporated by reference herein. The State may exercise this option only once during the duration of this Contract. The total duration of this Contract shall not exceed a total Contract period of five (5) years. Financial obligations of the State of Colorado payable after any current fiscal year are contingent upon the availability of funds for that purpose as set forth in paragraph 24 of this Contract.

ii) **Change Order Letter.** The State may make the following modifications to this Contract using a Unilateral Change Order Letter, in a form substantially equivalent to Exhibit B-2 attached hereto and

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incorporated by reference herein, when such modifications are requested by the Contractor, in writing, or determined by the State to be necessary and appropriate:

- A) Change of Responsible Administrator, set forth in paragraph 2 of this Contract;
- B) Transfers to or between administrative budgetary categories, as required by paragraph 7 of this Contract;
- C) Changes to cumulative budgetary line item in excess of the lesser of ten percent (10%) of the total budgeted amount or Twenty Thousand Dollars (\$20,000.00), as required by paragraph 7 of this Contract;
- D) Change of Remit Address set forth in paragraph 5 of Exhibit A.

c) **Other Modifications.** If either Party desires to modify the terms of this Contract other than as set forth in subparagraphs a) and b) of this paragraph 8, written notice of the proposed modification shall be given to the other Party. No such modification shall take effect unless agreed to in writing by both Parties in an amendment to this Contract properly executed and approved in accordance with Colorado law, fiscal rules, and policies. Such amendment may also incorporate any modifications permitted under subparagraphs a) and .b) of this paragraph 8.

9. Audit.

a) **Discretionary Audit.** The State, through the Executive Director of the Department of Local Affairs, the Colorado State Auditor, or any of their duly authorized representatives and the federal government or any of its duly authorized representatives shall have the right to inspect, examine and audit the Contractor's and any subcontractor's records, books, accounts and other relevant documents. For the purposes of discretionary audit, the State specifically reserves the right to hire an independent certified public accountant of the State's choosing. A discretionary audit may be requested at any time and for any reason during the period commencing on the Effective Date and continuing for five (5) years after the date of the final payment for the Project under this Contract is received by the Contractor, provided that the audit is performed during normal business hours.

b) **Mandatory Audit.** Whether or not the State or the federal government calls for a discretionary audit as provided above, the Contractor shall include the Project in its annual audit report as required by the Colorado Local Government Audit Law, 29-1-601, et seq., C.R.S., and implementing rules and regulations. Such audit reports shall be simultaneously submitted to the Department and the State Auditor. Thereafter, the Contractor shall supply the Department with copies of all correspondence from the State Auditor related to the relevant audit report. If the audit reveals evidence of non-compliance with applicable requirements, the Department reserves the right to institute compliance or other appropriate proceedings notwithstanding any other judicial or administrative actions filed pursuant to 29-1-607 or 29-1-608, C.R.S.

10. Insurance.

10.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.
- b. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

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c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

- 10.2** The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
- 10.3** The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.
- 10.4** The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
- 10.5** All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
- 10.6** The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.
- 10.7** Notwithstanding subsection a of this section, if the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

11. Conflict of Interest. The Contractor shall comply with the provisions of 18-8-308 and 24-18-101 through 24-18-109, C.R.S.

12. Remedies. In addition to any other remedies provided for in this Contract, and without limiting the remedies otherwise available at law or in equity, if the Contractor fails to comply with any contractual provision, the State, after written notice to the Contractor, may:

a) suspend this Contract and withhold further payments and/or prohibit the Contractor from incurring additional obligations of contractual funds, pending corrective action by the Contractor or a decision by the State to terminate this Contract in accordance with provisions herein. The State, in its sole discretion, may allow expenditures during the suspension period which the Contractor could not reasonably avoid, provided such costs were necessary and reasonable for the conduct of the Project; or

b) terminate this Contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

13. Contract Termination. This Contract may be terminated as follows:

a) **Termination Due to Loss of Funding.** The Parties hereto expressly recognize that the Contractor is to be paid or reimbursed with funds provided to the State for the purposes set forth herein, and therefore, the Contractor expressly understands and agrees that all its rights, demands and claims to payment or reimbursement arising under this Contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate or amend this Contract.

b) **Termination for Cause.** If, for any reason, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or

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stipulations of this Contract, the State shall give written notice to the Contractor of such delay or non-performance. If the Contractor fails to promptly correct such delay or non-performance within the time specified in the notice or twenty (20) days from the date of such notice, which ever is greater, the State shall have the right, at its sole option, to terminate this entire Contract, or such part of this Contract as to which there has been delay or failure to properly perform, for cause. If the State terminates this Contract for cause, the State shall reimburse the Contractor only for eligible expenditures made up to the date of termination.

Notwithstanding the above, the Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach of this Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of offset until such time as the exact amount of damages due the State from the Contractor is determined.

c) **Termination for Convenience.** When the interests of the State so require, the State may terminate this Contract in whole or in part for the convenience of the State. The State shall give written notice of termination to the Contractor specifying the termination of all or a part of this Contract and the effective date thereof, at least twenty (20) days before the date of termination. Exercise by the State of this termination for convenience provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, the Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, the Contractor shall stop work to the extent specified. The Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work.

14. Integration. This Contract, together with its exhibits and attachments, is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or modification hereto shall have any force or effect whatsoever, unless embodied in a writing, executed by the Parties pursuant to paragraph 8 of this Contract, and approved in accordance with Colorado State fiscal rules and policies.

15. Severability. To the extent that this Contract may be executed and performance of the obligations of the Parties may be accomplished within the intent of this Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

16. Waiver. The waiver of any breach of a term, provision or requirement hereof shall not be construed as a waiver of any other term, provision or requirement or of any subsequent breach of the same term, provision or requirement.

17. Binding on Successors. Except as otherwise provided herein, this Contract shall inure to the benefit of and be binding upon the Parties, and their respective successors and assigns.

18. Assignment. Notwithstanding paragraph 17, the Contractor may not assign its rights or duties under this Contract without the prior written consent of the State. No subcontract or transfer of this Contract shall in any case release the Contractor of responsibilities under this Contract.

19. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, all terms and conditions of this Contract, including but not limited to the exhibits and attachments hereto, which may require continued performance, compliance or effect beyond the termination date of this Contract shall survive such termination date and shall be enforceable by the State in the event of any failure to perform or comply by the Contractor or its subcontractors.

20. Successor in Interest. In the event the Contractor is an entity formed under intergovernmental agreement and the project is for the acquisition, construction or reconstruction of real or personal property to be used as a public facility or to provide a public service, the Contractor warrants that it has established protections that ensure that, in the event the Contractor entity ceases to exist, ownership of the property acquired or improved shall pass to a constituent local government or other eligible governmental successor in interest, or other successor if specifically authorized in Exhibit A, so that the property can continue to be used as a public facility or to provide a public service.

21. Non-Discrimination. The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws and requirements with respect to discrimination and unfair employment practices.

22. Compliance with Applicable Laws. At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal, state and local laws, and their implementing regulations, that have been or may hereafter be established, which laws and regulations are incorporated herein by this reference as terms and conditions of this Contract. The Contractor also shall require compliance with such laws and regulations by subcontractors under subcontracts entered into in connection with the Project.

23. Order of Precedence. In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

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- A. Colorado Special Provisions, of this contract.
- B. Modifications to the Contract, pursuant to Exhibits B-1,B-2, or Amendment.
- C. Remaining paragraphs of the Contract.
- D. Exhibit A, Scope of Services.

24. Availability of Funds. This Contract is contingent upon the continuing availability of State appropriations as provided in Section 2 of the Colorado Special Provisions, incorporated as a part of this Contract. The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If federal appropriations or grants fund this Contract in whole or in part, this Contract is subject to and contingent upon the continuing availability of appropriated federal funds for this Contract. If State of Colorado or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may immediately terminate this Contract in whole or in part without further liability.

25. Third Party Beneficiaries. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the State and the Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

SPECIAL PROVISIONS

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.
5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.
6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.
7. **[Not Applicable to Intergovernmental Contracts] VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.
10. **[Not Applicable to Intergovernmental Contracts]. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.
Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

CONTRACT SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:

THE CITY OF GRAND JUNCTION, COLORADO
Legal Name of Contracting Entity

BILL RITTER, JR., GOVERNOR

By *Susan E. Kirkpatrick*
Susan E. Kirkpatrick, Executive Director
Department of Local Affairs

846000592
Social Security Number or FEIN

Date 1/23/08

[Signature]
Signature of Authorized Officer

PRE-APPROVED CONTRACT FORM REVIEWER:

[Signature]

JAMES J. DOODY CHAIRMAN
(Print) Name & Title of Authorized Officer

Date 1/16/08

CORPORATIONS:
(A corporate attestation is required.)



Attest (Seal) By *Stephanie Lunn*
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

(Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
Leslie M. Shenefelt

By *Rose Marie Auten*
Rose Marie Auten, Controller
Department of Local Affairs

Date 01/23/08

**EXHIBIT A
SCOPE OF SERVICES**

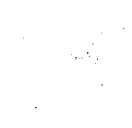


EXHIBIT A

SCOPE OF SERVICES

1. PROJECT DESCRIPTION, OBJECTIVES AND REQUIREMENTS

The Project consists of architectural and engineering services for the design of a proposed Public Safety Building that will include space needs for law enforcement and judicial operations, for the City of Grand Junction, Colorado (Contractor). Professional consulting services provided shall include a space needs study, preliminary architectural and engineering design and final design with construction cost estimates.

If cost savings are incurred while completing the Project, the State may require that those savings be split on a pro-rata basis between the State and the Contractor.

A contract shall be awarded to a qualified vendor or firm through a formal competitive selection process with the Contractor being obligated to award the contract to the lowest responsible bidder meeting the Contractor's specifications.

Eligible expenses include professional architectural and engineering services, printing and reproduction costs.

Energy and Mineral Impact Assistance program funds in the amount of FIVE HUNDRED THOUSAND AND XX/100 Dollars (\$500,00.00) are provided under this Contract to finance Project costs. The Contractor shall provide FIVE HUNDRED THOUSAND AND XX/100 Dollars (\$500,00.00) in Project financing from sources other than State funds, and, in any event, is responsible for all Project cost in excess of FIVE HUNDRED THOUSAND AND XX/100 Dollars (\$500,00.00).

Copies of any and all contracts entered into by the Contractor in order to accomplish this Project shall be submitted to the Department of Local Affairs upon execution, and any and all contracts entered into by the Contractor or any of its subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

The Contractor agrees to acknowledge the Colorado Department of Local Affairs in any and all materials or events designed to promote or educate the public about the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

2. ENERGY AND MINERAL IMPACT

Natural gas exploration and development in Mesa County and surrounding counties has increased significantly in the past couple of years. While the county is experiencing growth in oil and gas exploration and development, the more significant impacts are from the firms and support services that are locating in the Grand Valley. This growing workforce generates increasing demands on city services including traffic management, law enforcement and water and sewer services.

3. TIME OF PERFORMANCE

The Project shall commence upon the Effective Date and shall be completed on or before March 31, 2009. In accordance with paragraph 8.b.i. of this Contract, the Contractor may request an extension of the time for performance by submitting a written request, including a full justification for the request, to the State at least thirty (30) days prior to the termination of the performance period. If the State, in its sole discretion, consents to an extension, the State shall grant such extension in accordance with paragraph 8.b.i. of this Contract.

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4. BUDGET

<u>Revenues</u>		<u>Expenditures</u>	
Energy/Mineral Impact - GRANT	\$500,000	Public Safety Building Design	<u>\$1,000,000</u>
Contractor Funds	<u>500,000</u>		
Total	\$1,000,000	Total	\$1,000,000

5. REMIT ADDRESS: (Address to where payments are to be sent)

250 N. 5th Street
Grand Junction, CO 81501

6. DISTRIBUTION SCHEDULE

Grant Payments

\$450,000	Available for interim payments reimbursing the Contractor for actual expenditures made in the performance of this Contract. Payments shall be based upon properly documented financial and narrative status reports detailing expenditures made to date.
<u>50,000</u>	Available for final payment to be made to Contractor upon the completion of the Project and submission by the Contractor of final financial and narrative status reports documenting the expenditure of all Energy/Mineral Impact Assistance funds for which payment has been requested.
\$500,000	Maximum Available

7. PAYMENT PROCEDURE

The State shall establish billing procedures and pay the Contractor for actual expenditures made in the performance of this Contract based on the submission of statements in the format prescribed by the State. The Contractor shall submit requests for reimbursement, setting forth a detailed description of the amounts and types of reimbursable expenses.

Payments pursuant to this Contract shall be made, in whole or in part, from available funds encumbered for the purposes of this Contract. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds. In the event this Contract is terminated, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation shall be recovered from the Contractor by deduction from subsequent payment under this Contract or other contracts between the State and the Contractor, or by the State as a debt due to the State.

8. CONTRACT MONITORING

The State shall monitor this Contract on an as-needed basis, as determined by the State in its sole discretion. The State or any of its duly authorized representatives shall have the right to enter, inspect and examine the Project upon twenty-four (24) hours advance written notice to the Responsible Administrator.

9. REPORTING SCHEDULE

At the time the Contractor submits periodic payment requests, the Contractor shall submit, on a periodic basis, financial and narrative status reports detailing Project progress and properly documenting all to-date expenditures of Energy and Mineral Impact Assistance funds. The form and substance of such status reports shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of the Contractor and failure to comply may result in the delay of payment of funds and/or termination of this Contract. Required reports shall be submitted to the State at such time as otherwise specified by the State.

**EXHIBIT B1
OPTION LETTER**

Contract Routing #	
Encumbrance #	
Vendor # (for Remit Address)	
APPR	GBL

OPTION LETTER # _____

(Grant Between Colorado Department of Local Affairs and (Grantee Name and Address))

Date: _____ State Fiscal Year: _____ Option Letter No.: _____

SUBJECT: Option to renew for additional term

In accordance with paragraph 8.b.i of contract routing number _____, between the State of Colorado, Department of Local Affairs, (Division name) and (Contractor's Name) _____, the State hereby exercises the option for an additional term of (OPTION 1) ____ () months, (OPTION 2) one (1) year. The State may exercise this option only once during the duration of the Contract.

The amount of the current Fiscal Year contract value shall remain unchanged. The first sentence in paragraph 3 of Exhibit A of the Contract is hereby modified accordingly.

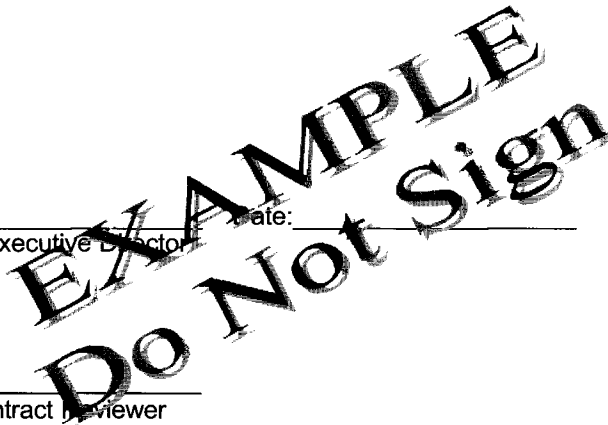
The total contract value to include all previous amendments, option letters, etc. is (\$ _____)

APPROVALS:

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____
(for) Susan E. Kirkpatrick, Executive Director
Department of Local Affairs



Reviewed by: _____
Pre-approved Form Contract Reviewer

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This Option Letter is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance under this Option Letter until the Option Letter is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and / or services provided.

STATE CONTROLLER:
Leslie M. Shenefelt

By _____
Rose Marie Auten, Controller
Department of Local Affairs

Date _____

EIAF #6031 – Grand Junction Public Safety Bldg.

**EXHIBIT B2
CHANGE ORDER LETTER**

Contract Routing #	
Encumbrance #	
Vendor # (for Remit Address)	
APPR	GBL

CHANGE ORDER LETTER # _____

In accordance with paragraph 8.b.ii of contract routing number _____ between the State of Colorado Department of Local Affairs, and (Name of Contractor _____), covering the period of (include performance period here), the State hereby unilaterally modifies the Contract as follows:

(Indicate purpose by choosing at least one of the following)

Choice #1: Responsible Administrator:

Paragraph 2 of the Contract is amended by deleting the name of the current Responsible Administrator in the first sentence and inserting in lieu thereof the name of the successor Responsible Administrator as follows:

Choice #2: Administrative Budget Categories: Exhibit A (Statement of Work) to the Contract is amended by transferring revenues and expenditures among administrative categories of paragraph 4 (Budget) as follows:

The total revenues and expenditures set forth in paragraph 4 of Exhibit A (Scope of Services) remain unchanged.

Choice #3: Cumulative Budgetary Line Item Changes in Excess of the lesser of ten percent (10%) or Twenty Thousand Dollars (\$20,000.00). Exhibit A (Scope of Services) to the Contract is amended by modifying paragraph 4 (Budget) as follows:

The total revenues and expenditures set forth in paragraph 4 of Exhibit A (Scope of Services) remain unchanged.

Choice #4: Remit Address: Exhibit A (Scope of Services) to the Contract is amended by deleting the current "Remit Address" in paragraph 5 (Remit Address) and inserting in lieu thereof the new "Remit Address" as follows:

The effective date of this change order is upon approval of the State Controller, or delegee, or _____, 20____, whichever is later.

APPROVALS:

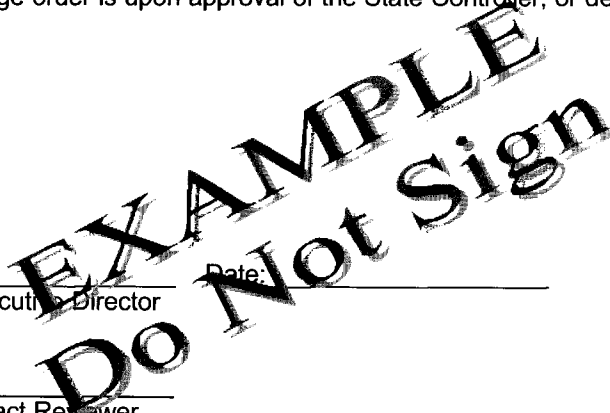
State of Colorado:

Bill Ritter, Jr., Governor

By: _____
(for) Susan E. Kirkpatrick, Executive Director
Department of Local Affairs

Date: _____

Reviewed by: _____
Pre-approved Form Contract Reviewer



ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

Leslie M. Sweetfelt

**EXAMPLE
DO NOT SIGN**

Rose Marie Auten, Controller
Department of Local Affairs

Date _____

Agency or Department Name
Local Affairs
Department or Agency Number
NAA
Contract Routing Number
09-965

CONTRACT AMENDMENT #1

THIS AMENDMENT, made this 4th day of March 2009, by and between the State of Colorado for the use and benefit of the Department of Local Affairs, 1313 Sherman Street, Denver, Colorado 80203 hereinafter referred to as the State, and the City of Grand Junction, 250 North 5th Street, Grand Junction, Colorado 81501, hereinafter referred to as the contractor,

FACTUAL RECITALS

Authority exists in the Law and Funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment; and

Required approval, clearance, and coordination has been accomplished from and with appropriate agencies; and

The parties entered into a contract dated January 23, 2008, for architectural and engineering services for the design of a proposed Public Safety Building that will include space needs for law enforcement and judicial operations, for the City of Grand Junction, Colorado. The purpose for this amendment is described below.

- 1) New Special Provisions pages.
- 2) The Time of Performance of the project has changed.

The intention in amending the contract is to incorporate changes, insert new contract language, and delete language that is no longer relevant to the Project.

NOW THEREFORE, it is hereby agreed that

- 1. Consideration for this amendment to the original contract, routing number #01219, encumbrance number F08MLG6031 dated January 23, 2008 consists of the payments which shall be made pursuant to this amendment and the promises and agreements herein set forth.
- 2. It is expressly agreed by the parties that this amendment is supplemental to the original contract, as amended, routing number #01219, collectively, referred to as the "original contract," which is, by this reference, incorporated herein, that all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this amendment as though they were expressly rewritten, incorporated, and included herein.
- 3. It is agreed the original contract is and shall be modified, altered, and changed in the following respects only:
 - a. Insert the following after item #25:

"26. Indemnification.

 - i. **Intergovernmental Grants**
If this is an intergovernmental Grant, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
 - ii. **Non-Intergovernmental Grants**
Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Grant."
 - b. **Special Provisions.** The Special Provisions located on page 7 of Contract are replaced with the new Special Provisions detailed in the attached Exhibit B-3.
 - c. **Time of Performance:** "Time of Performance" is modified by deleting "March 31, 2009" and inserting new "March 31, 2010".

4. The effective date of this amendment is upon approval of the State Controller or February 24, 2009, whichever is later.
5. Except for the "Special Provisions," in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this amendment and any of the provisions of the original contract, the provisions of this amendment shall in all respects supersede, govern, and control. The "Special Provisions" shall always be controlling over other provisions in the contract or amendments. The representations in the Special Provisions concerning the absence of bribery or corrupt influences and personal interest of State employees are presently reaffirmed.
6. FINANCIAL OBLIGATIONS OF THE STATE PAYABLE AFTER THE CURRENT FISCAL YEAR ARE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, AND OTHERWISE MADE AVAILABLE.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;">CONTRACTOR City of Grand Junction, Colorado</p> <p>By: <u>Rich Enokhson</u> Name of Authorized Individual</p> <p>Title: <u>Deputy City Manager</u> Official Title of Authorized Individual</p> <p><u>[Signature]</u> *Signature</p> <p>Date: <u>2/24/09</u></p>	<p style="text-align: center;">STATE OF COLORADO Bill Ritter, Jr., GOVERNOR</p> <p style="text-align: center;">DEPARTMENT OF LOCAL AFFAIRS</p> <p>By: <u>[Signature]</u> Susan E. Kirkpatrick, Executive Director</p> <p>Date: <u>3/4/09</u></p> <p style="text-align: center;">PRE-APPROVED FORM CONTRACT REVIEWER</p> <p>By: <u>[Signature]</u> Name of Pre-Approved Form Contract Reviewer</p> <p>Date: <u>3/4/09</u></p>
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ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: [Signature]

Rose Marie Auten, Controller Delegate

Date: 03/06/09

**EXHIBIT B-3
SPECIAL PROVISIONS**

SPECIAL PROVISIONS

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

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.
- 5. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
- 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
- 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09