

RESOLUTION NO. 1822

A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING THE EXECUTION OF A CONTRACT WITH THE
COLORADO DEPARTMENT OF TRANSPORTATION
REGARDING A GRANT FOR A TRANSPORTATION DEMAND
MANAGEMENT STUDY


WHEREAS, the City applied for and was granted federal transportation funds through the Denver Regional Council of Governments for a study of Transportation Demand Management strategies; and

WHEREAS, the Colorado Department of Transportation administers such federal funds and grant contracts.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. City Council hereby approves the Congestion Mitigation and Air Quality Contract for a Transportation Demand Management study substantially in the form attached hereto as Exhibit 1. The Mayor is authorized to execute the Contract on behalf of the City.

Adopted this 13th day of December, 2007.



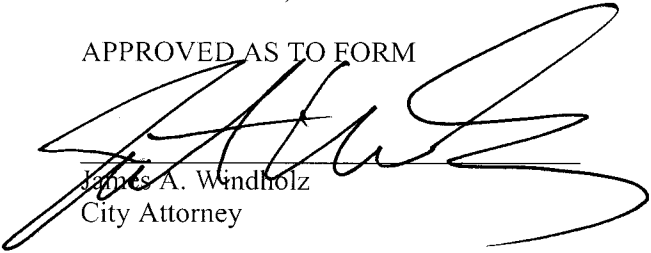
Charles J. Baroch
Mayor





Susan M. Brooks, MMC

APPROVED AS TO FORM




James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular meeting thereof held on the 13th day of December, A.D., 2007.



ATTEST:



Susan M. Brooks, City Clerk of the City of
Golden, Colorado

**CONGESTION MITIGATION AND AIR QUALITY CONTRACT WITH
CITY OF GOLDEN**

This CONTRACT, made this _____ day of _____, 2007, by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION" hereinafter referred to as "the Department", and the CITY OF GOLDEN, 911 10TH ST, GOLDEN, CO 80401, hereinafter referred to as "the Contractor" or "Contracting Agency."

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 payment in:

G/L Account: 4518000011	Company Code: 1000	CO Area: 1000
WBS Element: 16476.15.01	Fund: 400	Functional Area: 1456
Funds Center: DT510-010		Vendor Number: 2000026
		Catalog Federal Domestic Assistance Number (CFDA) 20.205
Total \$18,750		
Maximum Federal Amount Payable (80%): \$15,000		Local Match Total (20%): \$3,750

WHEREAS, the Contractor desires to enter into a contract with the Department in order to develop, implement and monitor its congestion mitigation and air quality program(s) for their Carbon Monoxide Nonattainment Area(s) as a control measure under the State Implementation Plan (SIP) to be financed by the use of Congestion Mitigation and Air Quality (CMAQ) funds, in accordance with FHWA and State policies; and,

WHEREAS, the Department desires to enter into this contract for such services by obtaining federal financial assistance for congestion mitigation and air quality programs through FHWA, provided that such projects are sponsored by the Metropolitan Planning Organization (MPO) in accordance with the terms, conditions, and provisions hereinafter contained in this Contract and in accordance with applicable federal laws and regulations; and,

WHEREAS, the Governor of the State of Colorado and general purpose local governments within the Denver Regional Council of Governments metropolitan areas have agreed that the Denver Regional Council of Governments, shall be the MPO and, therefore, is responsible for the Continuing, Comprehensive, and Cooperative (3C) Urban Transportation Planning Process throughout the Denver Regional Council of Governments Urban Area; and,

WHEREAS, the MPO has responsibility for approving and implementing, in conjunction with the Department, certain control measures on highway projects in order to comply with the SIP and the 1990 Clean Air Act Amendments (CAAA); and,

WHEREAS, Federal Congestion Mitigation and Air Quality (CMAQ) and/or Surface Transportation Program (STP) funds are available and have been budgeted by the Contractor, as a member of the MPO through the 3C Urban Transportation Planning Process; and,

WHEREAS, the Contractor has been awarded this project under the current Transportation Improvement Plan (TIP) for the Denver Regional Council of Governments, which includes funding for its congestion mitigation and air quality program(s); and,

WHEREAS, the Contractor represents that it has personnel, professional qualifications, ability, and resources to provide useful, accurate information to individuals and employers in facilitating its congestion mitigation and air quality program(s) and perform this program; and,

WHEREAS, this Contract is entered into pursuant to the authority of 43-1-106, 43-1-110 and 29-1-203, C.R.S. as amended.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. PURPOSE AND STATEMENT

- 1.1 Work to be performed under this Contract, and compensation for such work, shall be identified in the Statement of Work (Exhibit A), which is incorporated into this contract by this reference herein. The Statement shall include for each activity, an estimation of anticipated benefits from each program submitted, a budget, the activity purpose, objectives, major tasks, timeline of expected completion, and an evaluation process to determine the success of the project clearly stated for each project submitted.
- 1.2 The Contractor shall not commence Work to be performed in the Statement until the date specified by a written notice to proceed by the Department (which may be an electronic notice) and shall complete the Work by the date specified in the Statement, unless the time thereof is extended by mutual agreement of the parties hereto evidenced by letters or electronic notice.
- 1.3 By preparing and submitting the Statement of Work, the Contractor has agreed to perform this program within the total annual CMAQ funds made available.
- 1.4 The Contractor will be responsible for: 1) the initial design and implementation of its congestion mitigation and air quality program as outlined in the current TIP; 2) monitoring and evaluation of the program effectiveness; 3) the promotion of congestion mitigation and air quality program(s) by employers; 4) submittal of an annual report to the Department; and, 5) submitting annual results to the Department through the CMAQ Reporter.

2. AVAILABILITY OF FUNDS

- 2.1 **FEDERAL FUNDING.** This Contract is subject to, and contingent upon, the continuing availability of Federal funds for the purposes hereof. The parties hereto expressly recognize that the Contracting Agency is to be reimbursed with funds provided to the Department by the Federal Government for the purpose of completing the program identified in the Statement of Work and therefore, the Contracting Agency expressly understands and agrees that all its rights, demands, and claims arising under this Contract are contingent upon receipt of such funds by the

Department. In the event that such funds or any part thereof are not received by the Department, the Department may immediately terminate this Contract without liability, including liability for termination costs.

- 2.2 The amount of federal funds available to pay for the program performed by the Contracting Agency in any one year is limited by the amount of the unused portion of the allocated funds, made available through 23 U.S.C. § 104 (b)(2) and any amendments thereto; 23 U.S.C. 104 (f) and any amendments thereto, and 49 U.S.C. § 5303 and any amendments thereto.
- 2.3 The Department shall not be obligated to use State funds under this Contract. The Department's use of federal Congestion Mitigation and Air Quality (CMAQ) funds shall only be to reimburse the Contracting Agency for allowable costs incurred by the Contracting Agency as defined in Paragraph 7 of this Contract. The Contracting Agency shall be solely responsible for all costs incurred which are either not allowable or which exceed the funds available in the Contract.
- 2.4 Per 23 C.F.R. Section 420.111, the Statement of Work shall include a description of work to be accomplished and cost estimates for each activity.

3. PERSONNEL

The Contractor shall take all reasonable steps to carry out all activities described and identified in the Statement of Work. The Contractor shall be responsible to select staff/consultant services in compliance with all applicable federal procurement requirements including 23 CFR 172 and 49 CFR 18.36. Any Request for Proposal (RFP) used by the Contractor to secure consultant services must be reviewed by the Department before the Contractor releases the RFP. The Department shall have 15 calendar days from the date of receiving the RFP in which to return comments. Responses to the Department's comments will be provided by the Contractor within 15 calendar days of receipt of the comments. The Contractor shall notify the Department before executing any Contract for consultant services which utilizes program funding.

4. TERM – OPTION CLAUSE TO EXTEND SERVICES

- 4.1 The term of this Contract shall be for one year from the effective date with an option for an additional year. The expiration date shall not exceed September 30, 2009. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the manner set forth in the Statement of Work.
- 4.2 The Department may unilaterally exercise an option to add/drop non-CMAQ funded product(s)/service(s) described in the Statement of Work at the amounts established and/or require continued performance for a period of ninety (90) days for any services at the rates and terms specified in the contract. The Department may exercise this option by written notice to the Contracting Agency within sixty (60) days before the option begins in a form substantially equivalent to Exhibit B, attached and

incorporated hereto. Delivery/Performance of the product(s)/service(s) shall continue at the same rate and under the same terms established herein for a period not exceed fifteen (15) months, unless stated otherwise in this Contract.

5. CHANGE ORDER LETTER

5.1 Bilateral changes within the Purpose and Statement of the Contract, as defined in Paragraph 1 herein, including an increase/decrease of the maximum amount payable based on the costs specified herein by the Department and the Statement of Work to be performed, may be executed using the change order letter process described in this paragraph and a form substantially equivalent to the change order letter attached and incorporated hereto as Exhibit C for any of the following reasons:

1. Where the agreed changes to the program results in an adjustment to the price, delivery schedule, or time of performance;
2. Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance;
3. Where the changes to the Contract are priced based on the amount to be paid for the products and/or program established in the Contract or Exhibit A; or
4. Where the changes to the Contract are priced equal to or less than established catalog generally extended to the public or on prices or rates set by law or regulation.

Other bilateral modifications not within the terms of the paragraph must be executed by formal amendment to the Contract, approved in accordance with Colorado State law and State Fiscal Rules.

6. BILLING

6.1 The Contractor shall request reimbursement from the Department for the allowable cost of CMAQ funds for those eligible activities identified in the Statement of Work, and other costs as described in Paragraph 6 of this Contract, incurred during the contract fiscal year within the limits of this Contract in compliance with federal and State law and other applicable regulations. Reimbursement requests shall be submitted by the Contractor to the Department no more than monthly, no less than quarterly, and will be reimbursed based on the commitment ratios on page 1 of this Contract. The Contracting Agency will bill the Department within thirty (30) days of the month following the end of their billing cycle. Billings should be itemized in the same categories as in the Statement of Work. Upon presentation of invoice(s) to the department for eligible costs incurred, the Department will process and reimburse all billings within thirty (30) days of receipt.

6.2 Reimbursement request (Billing form) is attached and incorporated herein as Exhibit D to be used as a reference of what is required by the Department of the Contractor in requesting reimbursement. Upon signing the billing form requesting reimbursement, the designated representative of the Contractor has certified that:

1. The costs are allowable, and therefore reimbursable; and
2. The expenditure amount for that time period is correct; and
3. The agreed upon work has been performed and/or products have been produced; and
4. All Requests for Proposals have been forwarded to the Department for review and comment; and
5. Reimbursements are being requested in accordance with terms of this Contract; and
6. Copies of recorded times of employees are correct.

6.3 Along with the billing form, the Contractor shall include a documentation of expenses of federal funds for CMAQ Activities. Such information shall include but not be limited to the items listed in Paragraph 6.2 of this Contract as proof of documentation.

7. ALLOWABLE COSTS

7.1 Allowable and indirect costs may include but are not limited to those listed in OMB Circular A-87, 49 CFR Part 18, and State Fiscal Rule 2-7. However, such costs shall be limited to those costs determined by the Department as necessary to directly carry out the tasks described in the Statement of Work for this Contract.

7.2 In determining the amount of allowable costs, the Department will exclude:

1. Any costs incurred by the Contractor before the execution of the Contract, Change Order Letter or Option Letter.
2. Any costs incurred by the Contractor that are not included in the Statement of Work.
3. Any cost incurred by the Contractor after the termination date of this Contract or Amendment.

7.3 The Contractor agrees that reimbursement of any cost under this Contract does not constitute a final Department decision about the allowability of the costs and does not constitute a waiver of any violation by the Contractor of the terms of this Contract.

7.4 Final payment by the Department under this contract will be made within 30 days of receipt of the annual report.

8. ANNUAL REPORT

8.1 Thirty (30) days after the completion date of this contract, the Contractor shall be responsible to coordinate with the MPO to submit an annual report using the "CMAQ Reporter", describing, in detail, the performance of the work and the extent to which

the use of alternative modes of transportation and/or improvement in air quality were increased during the contract period as a result of the program.

- 8.2 The Contractor shall be responsible for tracking, gathering, maintaining, and reporting of CMAQ nonattainment or maintenance area program activities by category, which will include emission reduction estimates and activity costs.

9. PROGRAM MONITORING, REPORTING AND PERFORMANCE

- 9.1 Reporting made under Paragraph 8 shall be done in accordance with 23 C.F.R. 420.117, 450 and 49 C.F.R. Part 18 and Part 19.

- 9.2 Activities described in the Statement of Work and in Paragraph 1 shall be monitored by the Department in accordance with the provisions of 23 CFR Part 450 and any amendments and this Contract. The provisions of this paragraph do not constitute a waiver of legal and administrative appeals available to the Contractor or the Department.

- 9.3 The Department, in accordance with 49 CFR Part 18.40, will monitor all the activities of the Contractor to assure that the Work is being performed consistent with supporting federal laws and regulations, as amended, to enable the preparation and submission of appropriate reports that will contain at a minimum:

1. Comparison of actual performance with established goals during, and once the program is complete;
2. Progress in meeting schedules;
3. Comparison of budgeted (approved) amounts and actual costs incurred;
4. Cost variances to budget;
5. Approved program revisions; and
6. Other pertinent supporting data.

- 9.4 In responding to these requirements, the Department will utilize the following steps and procedures to ensure that assigned responsibilities are carried out:

1. Monitoring Documents

The Department will use the current Statement of Work, and supporting documentation, in reviewing the progress being made by the Contractor to meet the commitments in this Contract. The Statement of Work must include all activities, deliverables, and performance measures, and budgets committed to by the Contractor.

2. Monitoring Meetings

Meetings between Department and Contractor representatives will be conducted at the Department's discretion for the purpose of reviewing progress, resource allocations, and billings.

3. Progress and Financial Reports

The Department will prepare and submit progress and financial reports to the appropriate federal agencies.

- 9.5 The Contractor is responsible for the timely production of all the products, which it has committed to in the Statement of Work. The products are considered acceptable if developed and/or approved in accordance with the local MPO process where applicable. The Statement of Work, TIP and Transportation Plan will be reviewed and/or approved by State and federal agencies, as defined in 23 CFR Part 420.
- 9.6 The Contractor shall amend the Statement of Work when:
1. Adding or deleting funds from the Statement of Work Budget.
 2. Adding or deleting substantial portions of Statement of Work Activities. For the purposes of this Contract, substantial will be defined as any task that requires a 15% change in funds allocated to activities specified in the Statement.
- 9.7 Within thirty (30) days after the end of the Program Period, the Contractor will provide to the Department a final accomplishment report of the activities performed under this Contract for the completed fiscal year. It shall include, but not be limited to:
1. Final accomplishments by activities; and
 2. Status of uncompleted products; and
 3. Accomplishment of performance measures; and
 4. Actual expenditures for the Program Period.
- 9.8 If any product that the Contractor has committed to in the Statement of Work is not produced and justification was not provided, and having been determined by the Department the Contractor has materially failed to comply with the terms and conditions of this Contract, the following steps, in accordance with 49 CFR 18.43, will be implemented by the Department:
1. The Department representative will meet with the Contractor representative to discuss performance.
 2. The Department representative will report the progress to the Division of Transportation Development Director.
 3. The Director will issue a decision as to whether performance is satisfactory or unsatisfactory. If performance was determined to have been unsatisfactory, the Department shall determine if a reduction in allocation is appropriate. The Contractor will be notified of any decisions made.
- 9.9 The Contractor is responsible for monitoring the work activities of subcontractors.

10. RECORDS, ACCOUNTS, REPORTS, AND AUDITS

- 10.1 The Contractor and any consultants shall maintain all books, records, and other documentation pertaining to authorized Statement activities and to completely substantiate all costs incurred and billed to the Department during the current Program Period and for a period of three (3) years from the date of final payment under the terms of this Contract. These records shall be made available for inspection and audit to the Department, FHWA, or the Comptroller General of the United States, and copies thereof shall be furnished, if requested. The Contractor shall include this record keeping/audit requirement in any Contract with any consultant employed to perform Statement activities by expressly requiring the consultant to comply with this requirement.
- 10.2 The Department and FHWA are specifically authorized to review and inspect at all reasonable times all such records and all technical and financial aspects of the activities described in the Statement. FHWA will arrange such review and inspections through the Department.

11. OWNERSHIP OF DATA AND COPYRIGHTS

- 11.1 Data, studies, surveys, drawings, maps, models, photographs, reports, and any other materials produced or developed pursuant to this agreement shall become the property of the Contractor, except as set forth herein, also, the Contracting Agency is hereby authorized to copyright and market computer software produced under this agreement. All proceeds from the sale of products or services developed under this agreement must be returned to the Contracting Agency for transportation planning purposes.
- 11.2 The Contractor agrees to provide to the FHWA and the Department a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, all such materials for Department and U.S. Government purposes.
- 11.3 All information, data, reports, and maps which are developed by the contractor for carrying out the activities in this program shall be made available in sufficient copies to the Department and FHWA (not to exceed fifteen).
- 11.4 All reports pertaining to the performance of this Contract shall be reviewed by the Department, and made available to FHWA for review, but no report will be published without the prior approval of FHWA. Any published material shall acknowledge the financial participation of all agencies contributing funding to the program. Any published materials acknowledging the contribution of the FHWA shall include the federal disclaimer statement "FUNDED BY THE FHWA". Published materials includes any non-internal documents, reports, maps, photographs, computer software, or like materials that are intended to be reviewed by those outside FHWA, the Department and the Contractor.

12. CONFLICT OF INTEREST

- 12.1 During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Contractor's obligations under this contract.
- 12.2 Additionally, the Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of the Department. Thus, the Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of the Contractor's obligations to the Department in accordance with the terms and conditions of this contract, without prior written approval of the Department.
- 12.3 In the event the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the Department a full disclosure statement setting forth the relevant details for the Department's consideration and direction. Failure to promptly submit a disclosure statement or to follow the Department's direction in regard to the apparent conflict shall be grounds for termination of the contract.
- 12.4 The Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer, or agent of the Contractor or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- (a) an employee, officer or agent;
 - (b) any member of the employee's immediate family;
 - (c) an employee's partner; or
 - (d) and organization, which employs, or is about to employ, any of the above,

has a financial or other interest in the party who is promised the award. The Contractor's or sub contractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor, potential contractors, or parties to sub-Contracts.

13. LEGAL AUTHORITY

The Contractor warrants that it possesses the legal authority to enter into this Contract and it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind Contractor to the terms herein. The Contractor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.

14. TERMINATION OF CONTRACT

14.1 Termination for Convenience

The Department may terminate this contract at any time the Department determines that the purposes of the distribution of funding under this contract would no longer be served by completion of the program. The Department shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this contract shall, at the option of the Department, be delivered by the Contractor to the Department and shall become the State's property. The Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and goods delivered.

14.1.1 If this contract is terminated by the Department as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of the Contractor covered by this contract, less payments of compensation previously made, provided, however, that if less than sixty percent (60%) of the services covered by this contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the Contractor during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

14.2 Termination for Default/Cause

14.2.1 If, through any cause, the Contractor shall fail to fulfill its obligations under this contract, in a timely and proper manner, or if the Contractor shall violate any of the covenants, Contracts, or stipulations of this contract, the Department shall thereupon have the right to terminate this contract for cause by giving written notice to the Contractor of its intent to terminate and providing no less than ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this contract shall, at the option of the Department, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and goods delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this contract. This provision shall in no way limit other remedies available to the Department in this contract, or remedies otherwise available at law.

14.2.2 Notwithstanding the above, the Contractor shall not be relieved of liability to the Department for any damages sustained by the Department by virtue of any breach of this contract by the Contractor, and the Department may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the Department from the Contractor is determined.

14.2.3 If after such termination it is determined, for any reason, that the Contractor was not in default, or that the Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

15. FORCE MAJEURE

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; public health/safety emergency acts of the State or any governmental entity in its sovereign capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

16. DESIGNATED REPRESENTATIVES

For the purpose of this Contract, the individuals identified below are hereby-designated representatives of the respective parties:

The Department:
Betsy Jacobsen
DTD/Transportation Planning Branch
4201 E. Arkansas Avenue
Shumate Building
Denver, CO 80222

Contracting Agency:
Steve Glueck
Planning & Development Director
City of Golden
1445 10th Street
Golden, CO 80401

17. NOTICES

All notices required to be given by the parties hereunder shall be to the individuals at the addresses set forth below. Either party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent:

The Department:
Betsy Jacobsen
DTD/Transportation Planning Branch
4201 E. Arkansas Avenue
Shumate Building
Denver, CO 80222

Contracting Agency:
Steve Glueck
Planning & Development Director
City of Golden
1445 10th Street
Golden, CO 80401

18. ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

The Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned, delegated, or subcontracted without the prior, written consent of the Department, which shall not be unreasonably withheld. Any attempt at assignment, transfer, delegation, or subcontracting without such consent shall be void except that the Contractor may assign the right to receive payments from the Department pursuant to C.R.S. § 4-9-318. All subcontracts and subcontractors consented to by the Department shall be made subject to the requirements, terms and conditions of this contract. The Contractor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work or Goods, and performance of any subcontracted services. Contractor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the Department as is required under Section 3 of the Special provisions attached and incorporated hereto.

19. SEVERABILITY

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. 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.

20. WAIVER

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

21. VENUE

Venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

22. PRIORITIES

The Special Provisions for the State of Colorado are part of this Contract. Also, all of the circulars and regulations and statutes, as amended, that are cited in this Contract are incorporated herein by reference and made a part of this Contract. If a conflict occurs between the provisions of this Contract proper or the attachments hereto, the priority to be used to resolve such conflict shall be as follows:

1. Federal Law and Regulations; then
2. Colorado Special Provisions in this Contract; then
3. Incorporated material; then
4. This Contract proper; then
5. Statement of Work.

23. CONFIDENTIALITY OF STATE RECORDS AND INFORMATION

- 23.1 The Contractor acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited to personal records and information of individuals. It shall be the responsibility of the Contractor to keep all Department records and information confidential at all times and to comply with all Colorado State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the Department. Any request or demand for information in the possession of the Contractor made by a third party who is not an authorized party to this Contract shall be immediately forwarded to the Department's principal representative for resolution.
- 23.2 The Contractor shall notify all of its agents, employees, subcontractors and assigns who will come into contact with Department information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. The Contractor shall provide and maintain a secure environment that ensures confidentiality of all Department records and information wherever located. No Department information of any kind shall be distributed or sold to any third party or used by the Contractor or its agents in any way, except as authorized by this contract and as approved by the Department. Department information shall not be retained in any files or otherwise by the Contractor or its agents, except as set forth in this contract and approved by the Department. Disclosure of Department records or information may be cause for legal action against the Contractor or its agents. Defense of any such action shall be the sole responsibility of the Contractor.

24. LITIGATION REPORTING

The Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services or Goods provided or the Contractor's performance under this contract, which has been filed in any Federal or State court or administrative Contractor shall deliver copies of such document to the Department's principal representative, or in absence of such designation, to the chief executive officer of the Department, Contractor, or institution executing this contract on behalf of the Department.

25. ENTIRE UNDERSTANDING

This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment hereto, other than any Change Order Letter approved by the State Controller or his designee, shall be considered unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto, other than any Change Order Letter approved by the State Controller or his designee, shall have any force or effect unless embodied in a written Contract executed and approved pursuant to the State Fiscal Rules.

26. COMPLIANCE WITH APPLICABLE LAW – GRANT ASSURANCES

- 26.1 Since this grant contract involves the expenditure of federal funds, the Contractor shall at all times during the execution of this contract strictly adhere to and comply with all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract. Contractor shall also require compliance with such laws and regulations by subcontractors under subcontracts permitted under this contract. Federal laws and regulations that may be applicable include The Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments” (Common Rule), at 49 Code of Federal Regulations, Part 18, or the "Uniform Administrative Requirements for Grants and Contracts with Non-Profit Organizations”, at 49 Code of Federal Regulations, Part 19, as applicable. The requirements of 49 CFR Part 18, or Part 19, include, without limitation:
- 26.1.1 the Contractor shall follow applicable procurement procedures, as required by section 18.36(d) or 19.40;
 - 26.1.2 the Contractor shall request and obtain prior Department approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30 or 19.25;
 - 26.1.3 the Contractor shall comply with section 18.37 or 19.5 concerning any subgrants;
 - 26.1.4 to expedite Department approval, the Contractor's attorney, or other authorized representative, shall also submit a letter to the Department certifying Contractor compliance with section 18.30 or section 19.25 change order procedures, and with 18.36(d) or section 19.40 procurement procedures, and with section 18.37 or section 19.5 subgrant procedures, as applicable;
 - 26.1.5 the Contractor shall incorporate the specific Contract provisions described in section 18.36(i) or section 19.48 (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.
- 26.2 Title 23, United States Code, Part 112, and Title 23, Code of Federal Regulations, Part 172, if the Contract work includes professional engineering or architectural services.
- 26.3 Title 23, United States Code, Part 112, and Title 23, Code of Federal Regulations, Parts 633 and 635, if the Contract work includes construction services.
- 26.4 Provided, however, that to the extent that other applicable federal requirements (including the provisions of Title 23) are more specific than provisions of Title 49, Part 18 or 19, those requirements shall supersede such Part 18 or 19 provisions.

26.5 Federal laws and regulations incorporated into this contract include, without limitation:

- a) Age Discrimination Act of 1975 42 U.S.C. Sections 6101, *et seq.*
- b) Age Discrimination in Employment Act of 1967 29 U.S.C. 621-634
- c) Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. 12101, *et Seq.*
- d) Equal Pay Act of 1963 29 U.S.C. 206(d)
- e) Immigration Reform and Control Act of 1986 8 U.S.C. 1324(b)
- f) Section 504 of the Rehabilitation Act of 1973 29 U.S.C. 794
- g) Title VI of the Civil Rights Act of 1964 42 U.S.C. 2000(d)
- h) Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000(e)
- i) Title IX of the Education Amendment of 1972 20 U.S.C. 1681, *et seq.*
- j) Section 24-34-302, *et seq.*, Colorado Revised Statutes, as amended.

26.6 The Contractor shall also comply with any and all laws and regulations prohibiting discrimination in the performance of Contractor's obligations under this contract. In consideration of and for the purpose of obtaining any and all Federal and/or Colorado State financial assistance, the Contractor makes the following assurances, upon which the Department relies:

- a) Contractor shall not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of work under this contract.
- b) At all times during the performance of this contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor.

26.7 Contractor shall take all necessary affirmative steps, as required by 45 C.F.R. 92.36(e), Colorado Executive Order, and Procurement Rules to assure that small and minority business and women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this contract.

SPECIAL PROVISIONS FOR THE STATE OF COLORADO

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 Contract, 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 Contractor 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.

Revised October 25, 2006

Effective Date of Special Provisions: August 7, 2006

SPECIAL PROVISIONS

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:

Legal Name of Contracting Entity

BILL RITTER, JR. GOVERNOR

By _____
Executive Director
Department of Transportation

Social Security Number or FEIN

Date: _____

Signature of Authorized Officer

LEGAL REVIEW:
Attorney General, John W. Suthers

(Print) Name & Title of Authorized Officer

Date _____

By _____

Date _____

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____
(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 _____

Date _____

Revised: January 9, 2007

Exhibit A – Scope of Work

Project Summary

The City of Golden, in conjunction with the Colorado School of Mines (CSM) will prepare a community and campus based TDM plan for the central portions of the City of Golden. Building on the City's overall transportation plan and Comprehensive Plan policies, this plan will address specific multi-modal needs and strategies for a substantial portion of the community, including the downtown business area, several surrounding neighborhoods, and the CSM campus and surrounding housing areas. The plan will focus primarily on four elements; a land use and urban design element, a bike and pedestrian element, a local transit element, and a campus parking strategy. The transit element will have two separate focus areas; one related to intra-community mobility, and another focused on the proposed end of line for the West Corridor light rail line, to be opened in 2012.

This is a joint project between the City of Golden and the Colorado School of Mines. Jefferson County staff will also participate in the project as a partner, especially regarding the local transit element. The Golden Chamber of Commerce also supports the project through a Transit Committee. RTD staff have also indicated a willingness to participate in the evaluation of phased local transit options that can be implemented with the completion of the West Corridor light rail line.

Although much of the plan will benefit the entire City of Golden, parts of the plan will focus primarily on the area bounded by Iowa Street on the north, State Highway 93 and the foothills on the west, South Table Mountain on the east, and Golden High School on the south. Those portions of the community represent the greatest opportunity for increased use of alternative modes on a regular basis, as well as vehicle trip reduction, and improved urban design. For the transit element, connections to the West Corridor end of line and nearby population and employment centers will be a major influence.

Program Scope and Work Plan

Introduction

This proposed TDM Study will be comprised of several major components. These include consultant selection, phased study preparation based upon the timing of funding, agency coordination, and public outreach and future implementation.

The primary approach to meet the project goals listed below will be the heavy involvement of the agency stakeholders and public to assure practical yet innovative solutions.

Project Management & Outreach

Meetings will be held with project stakeholders to guide the study and future implementation. A committee of agency stakeholders from at least the City of Golden, Colorado School of Mines, Jefferson County, and RTD will be formed to assure open communication.

Additional outreach will include printing outreach materials, staff presentations at public meetings, use of the City and CSM web sites, use of the monthly City newsletter, and public open houses.

Program Evaluation

Program evaluation for the project study will occur prior to completion of the project, and will be based upon an evaluation of the study results and participation. Evaluation of the implementation stage of the project will be handled on an on-going basis over the next several years. The study project evaluation will include the following:

1. Use of citizen participation and support comment cards in public meetings and discussions of the project. These comment cards will be used to test the relevance of the study topics and recommendations. A summary of citizen comments will be included as an appendix to the final study report.
2. Review of the final study recommendations by the Stakeholder committee, to determine if the recommendations address all of the major components of the scope of work as contained in the final consultant contract. This review will be conducted prior to completion of the final study report.
3. Development and execution of a citizen stakeholder survey, using the city web site and monthly newsletter, to determine citizen support for the study recommendations. This survey will occur prior to completion of the final study report, and will be part of the process for prioritization of implementation efforts.

Program Goals

- This study is part of a new City Council Sustainability Initiative for the period from 2007 through 2016. This study will be a critical part of the success of transportation and TDM goals for the community. The benefits will be for a longer period, however 10 years is a reasonable estimate for evaluation of the grant.
- The Sustainability Initiative will reduce community trips by at least 10% over the period of the project. Based upon the 7,900 households in the community at an average of 8 daily trips per household, a trip reduction of 10% for five days a week would result in a reduction of 1,580,000 trips per year. The total trip reduction over the 10 year period would therefore be 15,800,000 trips. Of course, only a percentage of the trip reduction can be attributed to the development of the TDM study and strategy. The implementation will create the primary benefit. However, we estimate that 15% of the total benefit will be directly attributable to the TDM plan. Therefore the trip reduction attributable to this project will be **2,370,000 trips**
- DRCOG estimates average daily VMT of community travel in Golden (on non freeway roads) to have been 335,935 in 2000, with a 4.1% annual increase in the 1990's. Based on a more conservative 2.5% growth for the 6 years until the start of the project, the daily VMT at the start of 2007 would be 389,581 for the community. Again utilizing 5 days a week for the analysis, the annual community VMT is approximately 97,395,000 miles. The project will achieve a reduction of 10% over the period of the 10 year project for an annual reduction of at least 9.7 million miles (97 million over the project life). For this indicator, we reduced the benefit assumed for the initial plan to 12% of the achieved reduction, since the costs for VMT reduction will involve higher transit reliance and cost. Therefore, the VMT reduction attributable to this TDM study will be **11.6 million miles**.

Program Oversight

The Agency stakeholder committee will convene on a regular basis to guide consultant selection, and study preparation. These meetings are designed to discuss program progress and assist in troubleshooting any issues that may arise.

Project Implementation Plan

Table 2 describes the tasks that will take place during the study. The project is scheduled to start November 2007 and will last through April 2009.

Table 2 – Project Implementation Schedule

Task Number	Task	Task Detail	Timeframe
Task 1	Consultant Selection	Release RFP, evaluate consultant teams, select consultant Team	11/07 – 03/08
Task 2	Project Management & Outreach	Includes duties to guide program development, ongoing program management, present information to interested parties.	11/07 – 04/09
Task 3	Analysis and start of study preparation and recommendations (FY 2008 phase)	The consultant team and stakeholders will assess existing conditions and opportunities, identify and begin to evaluate alternative program and project recommendations.	04/08 – 09/08
Task 4	Alternatives evaluation, community review, final study recommendations (FY 2009 phase)	The consultant team and stakeholders will complete the evaluation of the alternatives analysis, and prepare both preliminary and final recommendations for implementation. Final stakeholder and community review, and program evaluation will occur prior to release of final report.	10/08 – 04/09

Budget

Table 1 – Program Budget

	2008	2009	Total
Consultant Study	\$17,000	\$42,000	\$ 59,000
Outreach, Final Document, Evaluation (Materials and consultant costs)	\$1,750	\$1,750	\$ 3,500
PROJECT TOTAL	\$ 18,750	\$43,750	\$ 62,500
CMAQ Request	\$ 15,000	\$35,000	\$ 50,000
Required Match (20% match)	\$3,118	\$7,276	\$ 10,394
Local Overmatch (in-kind)	\$632	\$1,474	\$ 2,106

The City of Golden will provide management oversight for this program for FY 2008 and 2009. The cost of these services is estimated to not be significant for this part of the project.

Match:

The match amounts will be met by cash contributions by the City of Golden and Colorado School of Mines totaling \$12,500. If additional cash match commitments from other partners, including Jefferson County and/or RTD occur, CDOT will be notified. Contract administration for the project is not seen to be a significant cost.

Allowable Costs:

The City of Golden assures that the organization has an accounting system in place which tracks costs by project. This accounting system includes:

- A professional services contracting system that assures deliverables, and proper billing for work completed.
- Methods to verify contractor compliance with all CDOT contracting requirements.
- Separate tracking of grant funds and grant projects as well as necessary auditing.

OPTION LETTER

Exhibit B

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

SUBJECT: *(Please indicate purpose by choosing one of the following)*

- 1 - Option to renew only (for an additional term)**
- 2 - Change in the amount of goods within current term**
- 3 - Change in amount of goods in conjunction with renewal for additional term**
- 4 - Level of service change within current term**
- 5- Level of service change in conjunction with renewal for additional term**

In accordance with Paragraph(s) _____ of contract routing number (FY) (Contractor) (Routing #), between the State of Colorado, Department of/or Higher Ed Institution (Contractor name), (division name), and (contractor's name) the State hereby exercises the option for an additional term of (include performance period here) at a cost/price specified in Paragraph/Section/Provision _____, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Paragraph/Schedule/Exhibit

The amount of the current Fiscal Year contract value is increased/decreased by (\$ amount of change) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

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

APPROVALS:

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____
_____ Executive Director/College President]
Colorado Department of/or Higher Ed Institution _____

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 goods and/or services provided.

State Controller
Leslie M. Shenefelt

By: _____
Date: _____

Effective: January 9, 2007

BILATERAL CHANGE ORDER LETTER

Exhibit C

Date: _____ State Fiscal Year: _____ Bilateral Change Order Letter No. _____

In accordance with Paragraph _____ of contract routing number (FY) (Contractor) (Routing #) between the State of Colorado Department of or Higher Ed Institution (Contractor name) (division) and (contractor's name) covering the period of (include performance period here) the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Choice #1: Services/Supplies

Exhibit/Attachment _____, Schedule of Equipment for Maintenance or Schedule of Delivery, is amended by (adding/deleting) or (increasing/decreasing) the level of services. The term of this contract is hereby modified by (increasing/decreasing) the ending term date as appropriate to the change made above.

Choice #2: Price/Cost

The maximum amount payable by the State for (service/commodity) in Paragraph/Schedule/Exhibit/Attachment/Provision/Section _____ is (increased/decreased) by (\$ amount of change) to a new total of (\$____) based on the unit pricing schedule in Exhibit/Attachment _____. The first sentence in Paragraph_____ is hereby modified accordingly.

The total contract value to include all previous amendments, change order(s), etc. is (\$_____).

Choice #3: No Cost Change

The parties agree that the changes made herein are "no cost" changes and shall not be the basis for claims for adjustment to price, cost ceiling, delivery schedule, or other terms or conditions of the contract. The parties waive and release each other from any claims or demands for adjustment to the contract, including but not limited to price, cost, and schedule, whether based on costs of changed work or direct or indirect impacts on unchanged work.

[Include this sentence]: The effective date of this change order is upon approval of the State Controller or (date), 20 __ whichever is later.

Please sign, date, and return all copies of this letter on or before _____ 20____.

APPROVALS:

Contractor Name:
Bill Ritter, Jr., Governor

State of Colorado:

By: _____
Name: _____
Title: _____

For the Executive Director
Colorado Department of Transportation

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 goods and/or services provided.

State Controller
Leslie M. Shenefelt

By: _____
Date _____

Effective: January 9, 2007

**CONGESTION MITIGATION AND AIR QUALITY CONTRACT WITH
CITY OF GOLDEN**

This CONTRACT, made this 28th day of December 2007, by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION" hereinafter referred to as "the Department", and the CITY OF GOLDEN, 911 10TH ST, GOLDEN, CO 80401, hereinafter referred to as "the Contractor" or "Contracting Agency."

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 payment in:

G/L Account: 451800011	Company Code: 1000	CO Area: 1000
WBS Element: 16476.15.01	Fund: 400	Functional Area: 1456
Funds Center: DT510-010		Vendor Number: 2000026
		Catalog Federal Domestic Assistance Number (CFDA) 20.205
Total \$18,750		
Maximum Federal Amount Payable (80%): \$15,000		Local Match Total (20%): \$3,750

WHEREAS, the Contractor desires to enter into a contract with the Department in order to develop, implement and monitor its congestion mitigation and air quality program(s) for their Carbon Monoxide Nonattainment Area(s) as a control measure under the State Implementation Plan (SIP) to be financed by the use of Congestion Mitigation and Air Quality (CMAQ) funds, in accordance with FHWA and State policies; and,

WHEREAS, the Department desires to enter into this contract for such services by obtaining federal financial assistance for congestion mitigation and air quality programs through FHWA, provided that such projects are sponsored by the Metropolitan Planning Organization (MPO) in accordance with the terms, conditions, and provisions hereinafter contained in this Contract and in accordance with applicable federal laws and regulations; and,

WHEREAS, the Governor of the State of Colorado and general purpose local governments within the Denver Regional Council of Governments metropolitan areas have agreed that the Denver Regional Council of Governments, shall be the MPO and, therefore, is responsible for the Continuing, Comprehensive, and Cooperative (3C) Urban Transportation Planning Process throughout the Denver Regional Council of Governments Urban Area; and,

WHEREAS, the MPO has responsibility for approving and implementing, in conjunction with the Department, certain control measures on highway projects in order to comply with the SIP and the 1990 Clean Air Act Amendments (CAAA); and,

WHEREAS, Federal Congestion Mitigation and Air Quality (CMAQ) and/or Surface Transportation Program (STP) funds are available and have been budgeted by the Contractor, as a member of the MPO through the 3C Urban Transportation Planning Process; and,

WHEREAS, the Contractor has been awarded this project under the current Transportation Improvement Plan (TIP) for the Denver Regional Council of Governments, which includes funding for its congestion mitigation and air quality program(s); and,

WHEREAS, the Contractor represents that it has personnel, professional qualifications, ability, and resources to provide useful, accurate information to individuals and employers in facilitating its congestion mitigation and air quality program(s) and perform this program; and,

WHEREAS, this Contract is entered into pursuant to the authority of 43-1-106, 43-1-110 and 29-1-203, C.R.S. as amended.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. PURPOSE AND STATEMENT

- 1.1 Work to be performed under this Contract, and compensation for such work, shall be identified in the Statement of Work (Exhibit A), which is incorporated into this contract by this reference herein. The Statement shall include for each activity, an estimation of anticipated benefits from each program submitted, a budget, the activity purpose, objectives, major tasks, timeline of expected completion, and an evaluation process to determine the success of the project clearly stated for each project submitted.
- 1.2 The Contractor shall not commence Work to be performed in the Statement until the date specified by a written notice to proceed by the Department (which may be an electronic notice) and shall complete the Work by the date specified in the Statement, unless the time thereof is extended by mutual agreement of the parties hereto evidenced by letters or electronic notice.
- 1.3 By preparing and submitting the Statement of Work, the Contractor has agreed to perform this program within the total annual CMAQ funds made available.
- 1.4 The Contractor will be responsible for: 1) the initial design and implementation of its congestion mitigation and air quality program as outlined in the current TIP; 2) monitoring and evaluation of the program effectiveness; 3) the promotion of congestion mitigation and air quality program(s) by employers; 4) submittal of an annual report to the Department; and, 5) submitting annual results to the Department through the CMAQ Reporter.

2. AVAILABILITY OF FUNDS

- 2.1 **FEDERAL FUNDING.** This Contract is subject to, and contingent upon, the continuing availability of Federal funds for the purposes hereof. The parties hereto expressly recognize that the Contracting Agency is to be reimbursed with funds provided to the Department by the Federal Government for the purpose of completing the program identified in the Statement of Work and therefore, the Contracting Agency expressly understands and agrees that all its rights, demands, and claims arising under this Contract are contingent upon receipt of such funds by the

Department. In the event that such funds or any part thereof are not received by the Department, the Department may immediately terminate this Contract without liability, including liability for termination costs.

- 2.2 The amount of federal funds available to pay for the program performed by the Contracting Agency in any one year is limited by the amount of the unused portion of the allocated funds, made available through 23 U.S.C. § 104 (b)(2) and any amendments thereto; 23 U.S.C. 104 (f) and any amendments thereto, and 49 U.S.C. § 5303 and any amendments thereto.
- 2.3 The Department shall not be obligated to use State funds under this Contract. The Department's use of federal Congestion Mitigation and Air Quality (CMAQ) funds shall only be to reimburse the Contracting Agency for allowable costs incurred by the Contracting Agency as defined in Paragraph 7 of this Contract. The Contracting Agency shall be solely responsible for all costs incurred which are either not allowable or which exceed the funds available in the Contract.
- 2.4 Per 23 C.F.R. Section 420.111, the Statement of Work shall include a description of work to be accomplished and cost estimates for each activity.

3. PERSONNEL

The Contractor shall take all reasonable steps to carry out all activities described and identified in the Statement of Work. The Contractor shall be responsible to select staff/consultant services in compliance with all applicable federal procurement requirements including 23 CFR 172 and 49 CFR 18.36. Any Request for Proposal (RFP) used by the Contractor to secure consultant services must be reviewed by the Department before the Contractor releases the RFP. The Department shall have 15 calendar days from the date of receiving the RFP in which to return comments. Responses to the Department's comments will be provided by the Contractor within 15 calendar days of receipt of the comments. The Contractor shall notify the Department before executing any Contract for consultant services which utilizes program funding.

4. TERM - OPTION CLAUSE TO EXTEND SERVICES

- 4.1 The term of this Contract shall be for one year from the effective date with an option for an additional year. The expiration date shall not exceed September 30, 2009. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the manner set forth in the Statement of Work.
- 4.2 The Department may unilaterally exercise an option to add/drop non-CMAQ funded product(s)/service(s) described in the Statement of Work at the amounts established and/or require continued performance for a period of ninety (90) days for any services at the rates and terms specified in the contract. The Department may exercise this option by written notice to the Contracting Agency within sixty (60) days before the option begins in a form substantially equivalent to Exhibit B, attached and

incorporated hereto. Delivery/Performance of the product(s)/service(s) shall continue at the same rate and under the same terms established herein for a period not exceed fifteen (15) months, unless stated otherwise in this Contract.

5. CHANGE ORDER LETTER

5.1 Bilateral changes within the Purpose and Statement of the Contract, as defined in Paragraph 1 herein, including an increase/decrease of the maximum amount payable based on the costs specified herein by the Department and the Statement of Work to be performed, may be executed using the change order letter process described in this paragraph and a form substantially equivalent to the change order letter attached and incorporated hereto as Exhibit C for any of the following reasons:

1. Where the agreed changes to the program results in an adjustment to the price, delivery schedule, or time of performance;
2. Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance;
3. Where the changes to the Contract are priced based on the amount to be paid for the products and/or program established in the Contract or Exhibit A; or
4. Where the changes to the Contract are priced equal to or less than established catalog generally extended to the public or on prices or rates set by law or regulation.

Other bilateral modifications not within the terms of the paragraph must be executed by formal amendment to the Contract, approved in accordance with Colorado State law and State Fiscal Rules.

6. BILLING

6.1 The Contractor shall request reimbursement from the Department for the allowable cost of CMAQ funds for those eligible activities identified in the Statement of Work, and other costs as described in Paragraph 6 of this Contract, incurred during the contract fiscal year within the limits of this Contract in compliance with federal and State law and other applicable regulations. Reimbursement requests shall be submitted by the Contractor to the Department no more than monthly, no less than quarterly, and will be reimbursed based on the commitment ratios on page 1 of this Contract. The Contracting Agency will bill the Department within thirty (30) days of the month following the end of their billing cycle. Billings should be itemized in the same categories as in the Statement of Work. Upon presentation of invoice(s) to the department for eligible costs incurred, the Department will process and reimburse all billings within thirty (30) days of receipt.

6.2 Reimbursement request (Billing form) is attached and incorporated herein as Exhibit D to be used as a reference of what is required by the Department of the Contractor in requesting reimbursement. Upon signing the billing form requesting reimbursement, the designated representative of the Contractor has certified that:

1. The costs are allowable, and therefore reimbursable; and
2. The expenditure amount for that time period is correct; and
3. The agreed upon work has been performed and/or products have been produced; and
4. All Requests for Proposals have been forwarded to the Department for review and comment; and
5. Reimbursements are being requested in accordance with terms of this Contract; and
6. Copies of recorded times of employees are correct.

6.3 Along with the billing form, the Contractor shall include a documentation of expenses of federal funds for CMAQ Activities. Such information shall include but not be limited to the items listed in Paragraph 6.2 of this Contract as proof of documentation.

7. ALLOWABLE COSTS

7.1 Allowable and indirect costs may include but are not limited to those listed in OMB Circular A-87, 49 CFR Part 18, and State Fiscal Rule 2-7. However, such costs shall be limited to those costs determined by the Department as necessary to directly carry out the tasks described in the Statement of Work for this Contract.

7.2 In determining the amount of allowable costs, the Department will exclude:

1. Any costs incurred by the Contractor before the execution of the Contract, Change Order Letter or Option Letter.
2. Any costs incurred by the Contractor that are not included in the Statement of Work.
3. Any cost incurred by the Contractor after the termination date of this Contract or Amendment.

7.3 The Contractor agrees that reimbursement of any cost under this Contract does not constitute a final Department decision about the allowability of the costs and does not constitute a waiver of any violation by the Contractor of the terms of this Contract.

7.4 Final payment by the Department under this contract will be made within 30 days of receipt of the annual report.

8. ANNUAL REPORT

8.1 Thirty (30) days after the completion date of this contract, the Contractor shall be responsible to coordinate with the MPO to submit an annual report using the "CMAQ Reporter", describing, in detail, the performance of the work and the extent to which

the use of alternative modes of transportation and/or improvement in air quality were increased during the contract period as a result of the program.

- 8.2 The Contractor shall be responsible for tracking, gathering, maintaining, and reporting of CMAQ nonattainment or maintenance area program activities by category, which will include emission reduction estimates and activity costs.

9. PROGRAM MONITORING, REPORTING AND PERFORMANCE

- 9.1 Reporting made under Paragraph 8 shall be done in accordance with 23 C.F.R. 420.117, 450 and 49 C.F.R. Part 18 and Part 19.

- 9.2 Activities described in the Statement of Work and in Paragraph 1 shall be monitored by the Department in accordance with the provisions of 23 CFR Part 450 and any amendments and this Contract. The provisions of this paragraph do not constitute a waiver of legal and administrative appeals available to the Contractor or the Department.

- 9.3 The Department, in accordance with 49 CFR Part 18.40, will monitor all the activities of the Contractor to assure that the Work is being performed consistent with supporting federal laws and regulations, as amended, to enable the preparation and submission of appropriate reports that will contain at a minimum:

1. Comparison of actual performance with established goals during, and once the program is complete;
2. Progress in meeting schedules;
3. Comparison of budgeted (approved) amounts and actual costs incurred;
4. Cost variances to budget;
5. Approved program revisions; and
6. Other pertinent supporting data.

- 9.4 In responding to these requirements, the Department will utilize the following steps and procedures to ensure that assigned responsibilities are carried out:

1. Monitoring Documents

The Department will use the current Statement of Work, and supporting documentation, in reviewing the progress being made by the Contractor to meet the commitments in this Contract. The Statement of Work must include all activities, deliverables, and performance measures, and budgets committed to by the Contractor.

2. Monitoring Meetings

Meetings between Department and Contractor representatives will be conducted at the Department's discretion for the purpose of reviewing progress, resource allocations, and billings.

3. Progress and Financial Reports

The Department will prepare and submit progress and financial reports to the appropriate federal agencies.

- 9.5 The Contractor is responsible for the timely production of all the products, which it has committed to in the Statement of Work. The products are considered acceptable if developed and/or approved in accordance with the local MPO process where applicable. The Statement of Work, TIP and Transportation Plan will be reviewed and/or approved by State and federal agencies, as defined in 23 CFR Part 420.
- 9.6 The Contractor shall amend the Statement of Work when:
1. Adding or deleting funds from the Statement of Work Budget.
 2. Adding or deleting substantial portions of Statement of Work Activities. For the purposes of this Contract, substantial will be defined as any task that requires a 15% change in funds allocated to activities specified in the Statement.
- 9.7 Within thirty (30) days after the end of the Program Period, the Contractor will provide to the Department a final accomplishment report of the activities performed under this Contract for the completed fiscal year. It shall include, but not be limited to:
1. Final accomplishments by activities; and
 2. Status of uncompleted products; and
 3. Accomplishment of performance measures; and
 4. Actual expenditures for the Program Period.
- 9.8 If any product that the Contractor has committed to in the Statement of Work is not produced and justification was not provided, and having been determined by the Department the Contractor has materially failed to comply with the terms and conditions of this Contract, the following steps, in accordance with 49 CFR 18.43, will be implemented by the Department:
1. The Department representative will meet with the Contractor representative to discuss performance.
 2. The Department representative will report the progress to the Division of Transportation Development Director.
 3. The Director will issue a decision as to whether performance is satisfactory or unsatisfactory. If performance was determined to have been unsatisfactory, the Department shall determine if a reduction in allocation is appropriate. The Contractor will be notified of any decisions made.
- 9.9 The Contractor is responsible for monitoring the work activities of subcontractors.

10. RECORDS, ACCOUNTS, REPORTS, AND AUDITS

- 10.1 The Contractor and any consultants shall maintain all books, records, and other documentation pertaining to authorized Statement activities and to completely substantiate all costs incurred and billed to the Department during the current Program Period and for a period of three (3) years from the date of final payment under the terms of this Contract. These records shall be made available for inspection and audit to the Department, FHWA, or the Comptroller General of the United States, and copies thereof shall be furnished, if requested. The Contractor shall include this record keeping/audit requirement in any Contract with any consultant employed to perform Statement activities by expressly requiring the consultant to comply with this requirement.
- 10.2 The Department and FHWA are specifically authorized to review and inspect at all reasonable times all such records and all technical and financial aspects of the activities described in the Statement. FHWA will arrange such review and inspections through the Department.

11. OWNERSHIP OF DATA AND COPYRIGHTS

- 11.1 Data, studies, surveys, drawings, maps, models, photographs, reports, and any other materials produced or developed pursuant to this agreement shall become the property of the Contractor, except as set forth herein, also, the Contracting Agency is hereby authorized to copyright and market computer software produced under this agreement. All proceeds from the sale of products or services developed under this agreement must be returned to the Contracting Agency for transportation planning purposes.
- 11.2 The Contractor agrees to provide to the FHWA and the Department a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, all such materials for Department and U.S. Government purposes.
- 11.3 All information, data, reports, and maps which are developed by the contractor for carrying out the activities in this program shall be made available in sufficient copies to the Department and FHWA (not to exceed fifteen).
- 11.4 All reports pertaining to the performance of this Contract shall be reviewed by the Department, and made available to FHWA for review, but no report will be published without the prior approval of FHWA. Any published material shall acknowledge the financial participation of all agencies contributing funding to the program. Any published materials acknowledging the contribution of the FHWA shall include the federal disclaimer statement "FUNDED BY THE FHWA". Published materials includes any non-internal documents, reports, maps, photographs, computer software, or like materials that are intended to be reviewed by those outside FHWA, the Department and the Contractor.

12. CONFLICT OF INTEREST

- 12.1 During the term of this contract, the Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Contractor's obligations under this contract.
- 12.2 Additionally, the Contractor acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interest of the Department. Thus, the Contractor shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of the Contractor's obligations to the Department in accordance with the terms and conditions of this contract, without prior written approval of the Department.
- 12.3 In the event the Contractor is uncertain whether the appearance of a conflict of interest may reasonably exist, the Contractor shall submit to the Department a full disclosure statement setting forth the relevant details for the Department's consideration and direction. Failure to promptly submit a disclosure statement or to follow the Department's direction in regard to the apparent conflict shall be grounds for termination of the contract.
- 12.4 The Contractor and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer, or agent of the Contractor or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- (a) an employee, officer or agent;
 - (b) any member of the employee's immediate family;
 - (c) an employee's partner; or
 - (d) and organization, which employs, or is about to employ, any of the above,

has a financial or other interest in the party who is promised the award. The Contractor's or sub contractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor, potential contractors, or parties to sub-Contracts.

13. LEGAL AUTHORITY

The Contractor warrants that it possesses the legal authority to enter into this Contract and it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind Contractor to the terms herein. The Contractor agrees it shall submit voluntarily to the personal jurisdiction of the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado. The person(s) executing this contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this contract.

14. TERMINATION OF CONTRACT

14.1 Termination for Convenience

The Department may terminate this contract at any time the Department determines that the purposes of the distribution of funding under this contract would no longer be served by completion of the program. The Department shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this contract shall, at the option of the Department, be delivered by the Contractor to the Department and shall become the State's property. The Contractor shall be entitled to receive just and equitable compensation for any satisfactory services and goods delivered.

14.1.1 If this contract is terminated by the Department as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services satisfactorily performed bear to the total services of the Contractor covered by this contract, less payments of compensation previously made, provided, however, that if less than sixty percent (60%) of the services covered by this contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by the Contractor during the contract period which are directly attributable to the uncompleted portion of the services covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the Contractor, the Termination for Cause or Default provision shall apply.

14.2 Termination for Default/Cause

14.2.1 If, through any cause, the Contractor shall fail to fulfill its obligations under this contract, in a timely and proper manner, or if the Contractor shall violate any of the covenants, Contracts, or stipulations of this contract, the Department shall thereupon have the right to terminate this contract for cause by giving written notice to the Contractor of its intent to terminate and providing no less than ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this contract shall, at the option of the Department, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any services and goods delivered and accepted. The Contractor shall be obligated to return any payment advanced under the provisions of this contract. This provision shall in no way limit other remedies available to the Department in this contract, or remedies otherwise available at law.

- 14.2.2 Notwithstanding the above, the Contractor shall not be relieved of liability to the Department for any damages sustained by the Department by virtue of any breach of this contract by the Contractor, and the Department may withhold any payment to the Contractor for the purposes of mitigating its damages until such time as the exact amount of damages due to the Department from the Contractor is determined.
- 14.2.3 If after such termination it is determined, for any reason, that the Contractor was not in default, or that the Contractor's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if this contract had been terminated for convenience, as described herein.

15. FORCE MAJEURE

Neither the Contractor nor the Department shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; public health/safety emergency acts of the State or any governmental entity in its sovereign capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

16. DESIGNATED REPRESENTATIVES

For the purpose of this Contract, the individuals identified below are hereby-designated representatives of the respective parties:

The Department:
Betsy Jacobsen
DTD/Transportation Planning Branch
4201 E. Arkansas Avenue
Shumate Building
Denver, CO 80222

Contracting Agency:
Steve Glueck
Planning & Development Director
City of Golden
1445 10th Street
Golden, CO 80401

17. NOTICES

All notices required to be given by the parties hereunder shall be to the individuals at the addresses set forth below. Either party may from time to time designate in writing substitute addresses or persons to whom such notices shall be sent:

The Department:
Betsy Jacobsen
DTD/Transportation Planning Branch
4201 E. Arkansas Avenue
Shumate Building
Denver, CO 80222

Contracting Agency:
Steve Glueck
Planning & Development Director
City of Golden
1445 10th Street
Golden, CO 80401

18. ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES

The Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned, delegated, or subcontracted without the prior, written consent of the Department, which shall not be unreasonably withheld. Any attempt at assignment, transfer, delegation, or subcontracting without such consent shall be void except that the Contractor may assign the right to receive payments from the Department pursuant to C.R.S. § 4-9-318. All subcontracts and subcontractors consented to by the Department shall be made subject to the requirements, terms and conditions of this contract. The Contractor alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted work or Goods, and performance of any subcontracted services. Contractor shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the Department as is required under Section 3 of the Special provisions attached and incorporated hereto.

19. SEVERABILITY

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. 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.

20. WAIVER

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

21. VENUE

Venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

22. PRIORITIES

The Special Provisions for the State of Colorado are part of this Contract. Also, all of the circulars and regulations and statutes, as amended, that are cited in this Contract are incorporated herein by reference and made a part of this Contract. If a conflict occurs between the provisions of this Contract proper or the attachments hereto, the priority to be used to resolve such conflict shall be as follows:

1. Federal Law and Regulations; then
2. Colorado Special Provisions in this Contract; then
3. Incorporated material; then
4. This Contract proper; then
5. Statement of Work.

23. CONFIDENTIALITY OF STATE RECORDS AND INFORMATION

23.1 The Contractor acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited to personal records and information of individuals. It shall be the responsibility of the Contractor to keep all Department records and information confidential at all times and to comply with all Colorado State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the Department. Any request or demand for information in the possession of the Contractor made by a third party who is not an authorized party to this Contract shall be immediately forwarded to the Department's principal representative for resolution.

23.2 The Contractor shall notify all of its agents, employees, subcontractors and assigns who will come into contact with Department information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. The Contractor shall provide and maintain a secure environment that ensures confidentiality of all Department records and information wherever located. No Department information of any kind shall be distributed or sold to any third party or used by the Contractor or its agents in any way, except as authorized by this contract and as approved by the Department. Department information shall not be retained in any files or otherwise by the Contractor or its agents, except as set forth in this contract and approved by the Department. Disclosure of Department records or information may be cause for legal action against the Contractor or its agents. Defense of any such action shall be the sole responsibility of the Contractor.

24. LITIGATION REPORTING

The Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services or Goods provided or the Contractor's performance under this contract, which has been filed in any Federal or State court or administrative Contractor shall deliver copies of such document to the Department's principal representative, or in absence of such designation, to the chief executive officer of the Department, Contractor, or institution executing this contract on behalf of the Department.

25. ENTIRE UNDERSTANDING

This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion or other amendment hereto, other than any Change Order Letter approved by the State Controller or his designee, shall be considered unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto, other than any Change Order Letter approved by the State Controller or his designee, shall have any force or effect unless embodied in a written Contract executed and approved pursuant to the State Fiscal Rules.

26. COMPLIANCE WITH APPLICABLE LAW – GRANT ASSURANCES

- 26.1 Since this grant contract involves the expenditure of federal funds, the Contractor shall at all times during the execution of this contract strictly adhere to and comply with all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract. Contractor shall also require compliance with such laws and regulations by subcontractors under subcontracts permitted under this contract. Federal laws and regulations that may be applicable include The Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments” (Common Rule), at 49 Code of Federal Regulations, Part 18, or the "Uniform Administrative Requirements for Grants and Contracts with Non-Profit Organizations”, at 49 Code of Federal Regulations, Part 19, as applicable. The requirements of 49 CFR Part 18, or Part 19, include, without limitation:
- 26.1.1 the Contractor shall follow applicable procurement procedures, as required by section 18.36(d) or 19.40;
 - 26.1.2 the Contractor shall request and obtain prior Department approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30 or 19.25;
 - 26.1.3 the Contractor shall comply with section 18.37 or 19.5 concerning any subgrants;
 - 26.1.4 to expedite Department approval, the Contractor's attorney, or other authorized representative, shall also submit a letter to the Department certifying Contractor compliance with section 18.30 or section 19.25 change order procedures, and with 18.36(d) or section 19.40 procurement procedures, and with section 18.37 or section 19.5 subgrant procedures, as applicable;
 - 26.1.5 the Contractor shall incorporate the specific Contract provisions described in section 18.36(i) or section 19.48 (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.
- 26.2 Title 23, United States Code, Part 112, and Title 23, Code of Federal Regulations, Part 172, if the Contract work includes professional engineering or architectural services.
- 26.3 Title 23, United States Code, Part 112, and Title 23, Code of Federal Regulations, Parts 633 and 635, if the Contract work includes construction services.
- 26.4 Provided, however, that to the extent that other applicable federal requirements (including the provisions of Title 23) are more specific than provisions of Title 49, Part 18 or 19, those requirements shall supersede such Part 18 or 19 provisions.

26.5 Federal laws and regulations incorporated into this contract include, without limitation:

- a) Age Discrimination Act of 1975 42 U.S.C. Sections 6101, *et seq.*
- b) Age Discrimination in Employment Act of 1967 29 U.S.C. 621-634
- c) Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. 12101, *et Seq.*
- d) Equal Pay Act of 1963 29 U.S.C. 206(d)
- e) Immigration Reform and Control Act of 1986 8 U.S.C. 1324(b)
- f) Section 504 of the Rehabilitation Act of 1973 29 U.S.C. 794
- g) Title VI of the Civil Rights Act of 1964 42 U.S.C. 2000(d)
- h) Title VII of the Civil Rights Act of 1964 42 U.S.C. 2000(e)
- i) Title IX of the Education Amendment of 1972 20 U.S.C. 1681, *et seq.*
- j) Section 24-34-302, *et seq.*, Colorado Revised Statutes, as amended.

26.6 The Contractor shall also comply with any and all laws and regulations prohibiting discrimination in the performance of Contractor's obligations under this contract. In consideration of and for the purpose of obtaining any and all Federal and/or Colorado State financial assistance, the Contractor makes the following assurances, upon which the Department relies:

- a) Contractor shall not discriminate against any person on the basis of race, color, national origin, age, sex, religion and handicap, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions, in performance of work under this contract.
- b) At all times during the performance of this contract, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor.

26.7 Contractor shall take all necessary affirmative steps, as required by 45 C.F.R. 92.36(e), Colorado Executive Order, and Procurement Rules to assure that small and minority business and women's business enterprises are used, when possible, as sources of supplies, equipment, construction, and services purchased under this contract.

SPECIAL PROVISIONS FOR THE STATE OF COLORADO

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 Contract, 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 Contractor 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.

Revised October 25, 2006

Effective Date of Special Provisions: August 7, 2006

SPECIAL PROVISIONS

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

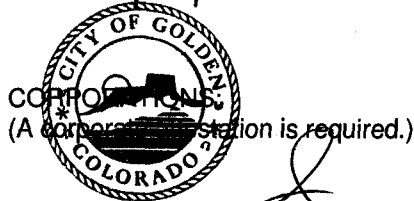
City of Golden
Legal Name of Contracting Entity

846000591
Social Security Number or FEIN

C. J. Barock
Signature of Authorized Officer

Charles J. Barock, Mayor
(Print) Name & Title of Authorized Officer

Date 12/13/07



Attest (Seal) By Susan A. Bevel
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

STATE OF COLORADO:

BILL RITTER, JR. GOVERNOR
By Jennifer Knud
Executive Director
Department of Transportation

Date: 12/21/07

LEGAL REVIEW:
Attorney General, John W. Suthers

By Kathryn E. Young
Date 12-27-07

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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STATE CONTROLLER
Leslie M. Shenefelt
By Cherry G. Hoff
Date 12/28/07

Revised: January 9, 2007

Exhibit A – Scope of Work

Project Summary

The City of Golden, in conjunction with the Colorado School of Mines (CSM) will prepare a community and campus based TDM plan for the central portions of the City of Golden. Building on the City's overall transportation plan and Comprehensive Plan policies, this plan will address specific multi-modal needs and strategies for a substantial portion of the community, including the downtown business area, several surrounding neighborhoods, and the CSM campus and surrounding housing areas. The plan will focus primarily on four elements; a land use and urban design element, a bike and pedestrian element, a local transit element, and a campus parking strategy. The transit element will have two separate focus areas; one related to intra-community mobility, and another focused on the proposed end of line for the West Corridor light rail line, to be opened in 2012.

This is a joint project between the City of Golden and the Colorado School of Mines. Jefferson County staff will also participate in the project as a partner, especially regarding the local transit element. The Golden Chamber of Commerce also supports the project through a Transit Committee. RTD staff have also indicated a willingness to participate in the evaluation of phased local transit options that can be implemented with the completion of the West Corridor light rail line.

Although much of the plan will benefit the entire City of Golden, parts of the plan will focus primarily on the area bounded by Iowa Street on the north, State Highway 93 and the foothills on the west, South Table Mountain on the east, and Golden High School on the south. Those portions of the community represent the greatest opportunity for increased use of alternative modes on a regular basis, as well as vehicle trip reduction, and improved urban design. For the transit element, connections to the West Corridor end of line and nearby population and employment centers will be a major influence.

Program Scope and Work Plan

Introduction

This proposed TDM Study will be comprised of several major components. These include consultant selection, phased study preparation based upon the timing of funding, agency coordination, and public outreach and future implementation.

The primary approach to meet the project goals listed below will be the heavy involvement of the agency stakeholders and public to assure practical yet innovative solutions.

Project Management & Outreach

Meetings will be held with project stakeholders to guide the study and future implementation. A committee of agency stakeholders from at least the City of Golden, Colorado School of Mines, Jefferson County, and RTD will be formed to assure open communication.

Additional outreach will include printing outreach materials, staff presentations at public meetings, use of the City and CSM web sites, use of the monthly City newsletter, and public open houses.

Program Evaluation

Program evaluation for the project study will occur prior to completion of the project, and will be based upon an evaluation of the study results and participation. Evaluation of the implementation stage of the project will be handled on an on-going basis over the next several years. The study project evaluation will include the following:

1. Use of citizen participation and support comment cards in public meetings and discussions of the project. These comment cards will be used to test the relevance of the study topics and recommendations. A summary of citizen comments will be included as an appendix to the final study report.
2. Review of the final study recommendations by the Stakeholder committee, to determine if the recommendations address all of the major components of the scope of work as contained in the final consultant contract. This review will be conducted prior to completion of the final study report.
3. Development and execution of a citizen stakeholder survey, using the city web site and monthly newsletter, to determine citizen support for the study recommendations. This survey will occur prior to completion of the final study report, and will be part of the process for prioritization of implementation efforts.

Program Goals

- This study is part of a new City Council Sustainability Initiative for the period from 2007 through 2016. This study will be a critical part of the success of transportation and TDM goals for the community. The benefits will be for a longer period, however 10 years is a reasonable estimate for evaluation of the grant.
- The Sustainability Initiative will reduce community trips by at least 10% over the period of the project. Based upon the 7,900 households in the community at an average of 8 daily trips per household, a trip reduction of 10% for five days a week would result in a reduction of 1,580,000 trips per year. The total trip reduction over the 10 year period would therefore be 15,800,000 trips. Of course, only a percentage of the trip reduction can be attributed to the development of the TDM study and strategy. The implementation will create the primary benefit. However, we estimate that 15% of the total benefit will be directly attributable to the TDM plan. Therefore the trip reduction attributable to this project will be **2,370,000 trips**
- DRCOG estimates average daily VMT of community travel in Golden (on non freeway roads) to have been 335,935 in 2000, with a 4.1% annual increase in the 1990's. Based on a more conservative 2.5% growth for the 6 years until the start of the project, the daily VMT at the start of 2007 would be 389,581 for the community. Again utilizing 5 days a week for the analysis, the annual community VMT is approximately 97,395,000 miles. The project will achieve a reduction of 10% over the period of the 10 year project for an annual reduction of at least 9.7 million miles (97 million over the project life). For this indicator, we reduced the benefit assumed for the initial plan to 12% of the achieved reduction, since the costs for VMT reduction will involve higher transit reliance and cost. Therefore, the VMT reduction attributable to this TDM study will be **11.6 million miles**.

Program Oversight

The Agency stakeholder committee will convene on a regular basis to guide consultant selection, and study preparation. These meetings are designed to discuss program progress and assist in troubleshooting any issues that may arise.

Project Implementation Plan

Table 2 describes the tasks that will take place during the study. The project is scheduled to start November 2007 and will last through April 2009.

Table 2 – Project Implementation Schedule

Task Number	Task	Task Detail	Timeframe
Task 1	Consultant Selection	Release RFP, evaluate consultant teams, select consultant Team	11/07 – 03/08
Task 2	Project Management & Outreach	Includes duties to guide program development, ongoing program management, present information to interested parties.	11/07 – 04/09
Task 3	Analysis and start of study preparation and recommendations (FY 2008 phase)	The consultant team and stakeholders will assess existing conditions and opportunities, identify and begin to evaluate alternative program and project recommendations.	04/08 – 09/08
Task 4	Alternatives evaluation, community review, final study recommendations (FY 2009 phase)	The consultant team and stakeholders will complete the evaluation of the alternatives analysis, and prepare both preliminary and final recommendations for implementation. Final stakeholder and community review, and program evaluation will occur prior to release of final report.	10/08 – 04/09

Budget

Table 1 – Program Budget

	2008	2009	Total
Consultant Study	\$17,000	\$42,000	\$ 59,000
Outreach, Final Document, Evaluation (Materials and consultant costs)	\$1,750	\$1,750	\$ 3,500
PROJECT TOTAL	\$ 18,750	\$43,750	\$ 62,500
CMAQ Request	\$ 15,000	\$35,000	\$ 50,000
Required Match (20% match)	\$3,118	\$7,276	\$ 10,394
Local Overmatch (in-kind)	\$632	\$1,474	\$ 2,106

The City of Golden will provide management oversight for this program for FY 2008 and 2009. The cost of these services is estimated to not be significant for this part of the project.

Match:

The match amounts will be met by cash contributions by the City of Golden and Colorado School of Mines totaling \$12,500. If additional cash match commitments from other partners, including Jefferson County and/or RTD occur, CDOT will be notified. Contract administration for the project is not seen to be a significant cost.

Allowable Costs:

The City of Golden assures that the organization has an accounting system in place which tracks costs by project. This accounting system includes:

- A professional services contracting system that assures deliverables, and proper billing for work completed.
- Methods to verify contractor compliance with all CDOT contracting requirements.
- Separate tracking of grant funds and grant projects as well as necessary auditing.

OPTION LETTER

Exhibit B

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

SUBJECT: *(Please indicate purpose by choosing one of the following)*

- 1 - Option to renew only (for an additional term)**
- 2 - Change in the amount of goods within current term**
- 3 - Change in amount of goods in conjunction with renewal for additional term**
- 4 - Level of service change within current term**
- 5- Level of service change in conjunction with renewal for additional term**

In accordance with Paragraph(s) _____ of contract routing number (FY) (Contractor) (Routing #), between the State of Colorado, Department of/or Higher Ed Institution (Contractor name), (division name), and (contractor's name) the State hereby exercises the option for an additional term of (include performance period here) at a cost/price specified in Paragraph/Section/Provision _____, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Paragraph/Schedule/Exhibit

The amount of the current Fiscal Year contract value is increased/decreased by (\$ amount of change) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (indicate Fiscal Year). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

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

APPROVALS:

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____
_____ Executive Director/College President]
Colorado Department of/or Higher Ed Institution _____

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State Controller
Leslie M. Shenefelt

By: _____
Date: _____

Effective: January 9, 2007

BILATERAL CHANGE ORDER LETTER

Exhibit C

Date: _____ State Fiscal Year: _____ Bilateral Change Order Letter No. _____

In accordance with Paragraph _____ of contract routing number (FY) (Contractor) (Routing #) between the State of Colorado Department of or Higher Ed Institution (Contractor name) (division) and (contractor's name) covering the period of (include performance period here) the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Choice #1: Services/Supplies

Exhibit/Attachment _____, Schedule of Equipment for Maintenance or Schedule of Delivery, is amended by (adding/deleting) or (increasing/decreasing) the level of services. The term of this contract is hereby modified by (increasing/decreasing) the ending term date as appropriate to the change made above.

Choice #2: Price/Cost

The maximum amount payable by the State for (service/commodity) in Paragraph/Schedule/Exhibit/Attachment/Provision/Section _____ is (increased/decreased) by (\$ amount of change) to a new total of (\$____) based on the unit pricing schedule in Exhibit/Attachment _____. The first sentence in Paragraph_____ is hereby modified accordingly. The total contract value to include all previous amendments, change order(s), etc. is (\$_____).

Choice #3: No Cost Change

The parties agree that the changes made herein are "no cost" changes and shall not be the basis for claims for adjustment to price, cost ceiling, delivery schedule, or other terms or conditions of the contract. The parties waive and release each other from any claims or demands for adjustment to the contract, including but not limited to price, cost, and schedule, whether based on costs of changed work or direct or indirect impacts on unchanged work.

[Include this sentence]: The effective date of this change order is upon approval of the State Controller or (date), 20 __ whichever is later.

Please sign, date, and return all copies of this letter on or before _____ 20_____.

APPROVALS:

Contractor Name:
Bill Ritter, Jr., Governor

State of Colorado:

By: _____
Name: _____
Title: _____

For the Executive Director
Colorado Department of Transportation

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State Controller
Leslie M. Shenefelt

By: _____
Date _____

Effective: January 9, 2007

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION

Bicycle/Pedestrian Program
4201 East Arkansas Avenue DTD
Denver, Colorado 80222
303-757-9982
FAX 303-757-9727
www.dot.state.co.us/bikeped
bicycleinfo@dot.state.co.us



December 31, 2007

Mr. Steve Glueck
Planning and Development Director
City of Golden
1445 10th Street
Golden, CO 80401

Dear Mr. Glueck: *Steve*

This is your official letter to proceed on the Congestion Mitigation and Air Quality (CMAQ) "TDM Plan" project. Attached is your CDOT contract 08-HTD-00049, Purchase Order 291000317. This contract provides a total of \$18,750 (\$15,000 in federal funds, with \$3,750 in local matching funds). The funds represent a local match of 20%. The contract is effective as of December 28, 2007.

Billing must be done on a monthly basis and all costs submitted are on a cost-reimbursement basis only. Each invoice submitted for reimbursement must have:

- Grantee name and mailing address
- Contract Number
- Purchase Order Number
- Name of Project
- Dates for specific period of billing (month and year)
- Progress report of work completed for the billing period

Your monthly invoice must be accompanied by a reimbursement form (also known as a summary sheet) which outlines the statement of work produced, along with corresponding back-up documentation. Documentation may include but not be limited to:

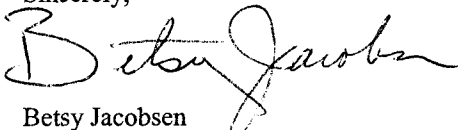
- Copy of subcontractor invoices marked "paid"
- Copy of all expense receipts
- Copy of checks or general ledger referencing all paid expenses
- Signed time sheets identifying the days and hours each employee worked on the project and their rate of pay
- In-kind match expenditure ledger and drawdown page identifying the amount remaining

I'm enclosing a draft local agency payment checklist for your reference. We're currently in the process of finalizing it, but it's a good resource for your reimbursement requirements.

Any bids or RFPs must be pre-approved by the CDOT Contract Administrator prior to their public release. Any subsequent contracts being written for those bids or RFPs must be submitted for pre-approval prior to being executed with the subcontractors.

Please contact me if you have any questions.

Sincerely,



Betsy Jacobsen
Bike/Ped/TDM Manager

Enclosure

Local agency payment checklist

- This is a **DRAFT** and may be edited after the training with FHWA.
- Local agency requests are reimbursements – which means the local agency must pay their vendors/contractors before invoicing CDOT
- Some items may not apply to each payment request

- 1) **Copies of invoices from local agency contractors**
 - a) The specific document the contractor used to invoice the local agencies. The local agency is responsible for ensuring that the backup matches the invoice and is eligible for reimbursement.
 - b) If the local agency pays the contractor a discounted amount, the full amount cannot be reimbursed to the local agency, only the discounted amount, less the local agency match.
 - c) Please ensure all payment vouchers from the local agencies state “ok to pay” or some notation of when paid or approved by, etc.
 - d) Invoice(s) should match check amounts.
 - e) A CDOT employee knowledgeable about the work being invoiced has to approve the local agency invoices in order for CDOT to make payments; the invoice must be paid within 45 days of receipt according to state statute.
 - f) Statements are not acceptable in lieu of an invoice.
- 2) **Copies of checks**
 - a) All of the following are acceptable - copies of checks, check registers, approved accounting system generated expenditure ledgers showing check number or Electronic Funds Transfer (EFT) and date paid.
 - b) CDOT needs to ensure that expenditures incurred by the local agencies have been paid by the local agency to their contractors, **before** CDOT is invoiced by the local agency.
 - i) It is against FHWA rules to bill CDOT before local agency contractors are paid.
- 3) **Expenditure ledger of the local agency’s financial accounting system displaying the accounting coding of all incurred expenditures that are eligible for reimbursement.**
 - a) CFR 49 part 18 Section 18.20 Standards for financial management systems requires the local agencies to have approved accounting systems so this should not be difficult to generate by project. The expenditure report is a good summary page if there is substantial documentation.
 - b) If the local agency has copies of the invoice(s) and check(s) you do not need the expenditure ledger also, but the invoices must be marked as approved for payment.
 - i) If the approved accounting system expenditure report is provided, this shows all of the expenditures so there is no question of whether these were paid. Excel spreadsheets are not approved expenditure reports except in a few programs.
- 4) **Time sheets** – FHWA requires all employees working on projects to provide time sheets with a breakdown of hours worked by day displaying all projects worked for the day, week, month or time collection period. The time sheet must also be signed or approved either in ink or electronically. See sample timesheet attached. Please see A-87, page 20-21 for full requirement by FHWA for timesheet requirements.
 - a) Backup documentation for payroll expenses includes the time sheet and an hourly or salary rate or a payroll ledger indicating hours, wages, and benefits. The rate only needs to be submitted once and will be referred to for future invoices.
 - b) If there is sensitive information such as social security number or addresses, please block that information.

- c) If the local agency uses a temp agency and submits the invoice from the temp agency for reimbursement, CDOT needs the same documentation the agency would use for approval before the local agency paid the temp agency.
- d) If the local agency used a quarterly or semester based system of timekeeping, the local agency cannot bill monthly for payroll expenses (this is especially true for colleges and universities). The local agency needs the backup from the timekeeping system and payroll records which would allow the local agency to bill quarterly or by semester.

5) **In kind matches –**

- a) If an in kind match is being used for the local match; please attach a copy of the FHWA approved in kind match, showing the approved amount and type of match.
- b) Expenditure ledger from local agency must also show the in kind match in their general ledger. CDOT needs a copy of this general ledger showing the in kind match.
- c) If the local agency is using in kind match on invoices to CDOT, attach a drawdown page indicating how much of the in kind match has been used.

6) **Indirect costs –**

- a) If indirect costs are being requested, please submit an FHWA/CDOT approved indirect letter. The letter must also state what indirect costs are allowed and at what percentage.
- b) If indirect costs are requested for reimbursement, need general ledger showing all direct costs and backup documentation for those costs. Example - payroll charges and benefits – need general ledger showing the payroll costs and benefit costs instead of time sheets for the employees or a copy of the payroll journal.
- c) Please submit a copy of this with each payment request, approved letter the first time are requested and the indirect letter will be retained on file for future invoices.

7) **Some local agencies “invoice” CDOT for the reimbursement.** The local invoice must show the entire amount to CDOT and then CDOT pays the agreed upon percentage of each invoice.

a) The backup documentation must match to the total request, not the amount the local agency is requesting for reimbursement.

8) **Summary pages are great –** this is especially good if there is a substantial amount of documentation. However, a summary sheet will not suffice for checks, timesheets, general ledger reports, or invoices. Summary pages are not required.