

Public Trust

INSTITUTE

August 30, 2022

U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

via email: eacoig@eac.gov

On behalf of the Public Trust Institute, please accept the following complaint against Colorado Secretary of State Jena Griswold for the misuse of Federal HAVA funds. In addition to serving as the current Secretary, Griswold is also a candidate for re-election on the November 2022 ballot.

In 2020, in response to the COVID-19 epidemic, Griswold received \$6.6 million in Cares Act/HAVA dollars to assist with the administration of elections. In Colorado, the Secretary of State serves as the chief election officer, but it is the county clerks that are responsible for conducting elections.

The EAC released guidance on the expenditure of these funds:

Allowable, Allocable, and Reasonable Costs

Guidelines and requirements governing allowable costs under grants are found in 2 CFR 200.400, Subpart E, Cost Principles. To be allowable under a grant, costs must be necessary, reasonable, and allocable to the grant. This is an assessment each state makes, but the EAC is of the opinion that expenditures related to the protection of the health and safety of poll workers, staff, and voters during federal elections as well as those resulting from unanticipated increased demand for vote by mail costs (e.g. printing ballots, postage, etc.), equipment, temporary staff, and similar costs due to COVID-19 would satisfy these elements.

Allowable Costs

An allowable cost is one that is necessary and reasonable for the proper and efficient performance and administration of the activities funded under the grant. Examples of allowable costs in this context could include cleaning supplies and protective masks for staff and poll workers, resources to meet an unanticipated increased demand for mail ballots due to self-isolation and quarantine in response to COVID-19, and temporary staff to process the increased absentee ballot demand. Allowable costs would not include those that are currently paid with state or local election jurisdiction funds, such as the regularly anticipated demand for mail ballots. See 2 CFR 200.403.

Allocable Costs

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An allocable expense is one that is directly related to the objectives and activities planned under the grant and included in the approved budget for the grant. This can include providing increased physical security for federal elections. See 2 CFR 200.404. If a state thinks that its approved budget does not include a line item that covers such expenses, staff may request approval from EAC for a budget amendment. Grantees can re-allocate funds to other line items up to 10% of the budget without approval from EAC.

Costs that would not be allocable would be costs incurred for state or administrative staff that are not working on activities supported under the grant. In some cases, a cost might only be partially allocable to the grant, e.g. In addition and for example, if the approved grant budget currently only includes costs associated with post-election auditing, you cannot allocate costs related to printing additional ballots to the grant. However, you can request a budget amendment from EAC to include costs related to voting systems and, thus, printing ballots. The EAC will work to approve such budget amendments within 48 hours.

Reasonable Costs

Finally, the cost is considered reasonable if, by its nature and amount, it does not exceed what a prudent person would pay under the circumstances. It can be based on frequency of use, actual cost for the products, and other relevant factors. Any expenditures in response to COVID-19 would require the same analysis as other costs. See 2 CFR 200.405. <https://www.eac.gov/sites/default/files/paymentgrants/cares/FAQ-Guidance/Guidance%20on%20Use%20of%20HAVA%20Funds%20for%20Expenses%20Related%20to%20COVID-19.pdf>

Rather than use the money as intended to assist with COVID related safety protocols or election security measures needed in the 2020 election, Griswold spent 2.8 million dollars in a no-bid contract to the Glover Park Group to boost her own profile in a television advertisement campaign. https://gazette.com/news/elections/colorado-attorney-general-phil-weiser-no-bid-contract-to-campaign-contributor-secretary-of-state-jena-griswold-expensive-dc-pr-firm-glover-park-group-among-custodial-funds-spending-amendment-78/article_5d830b5e-31ff-11ec-b538-d3d25621ada3.html Glover Park Group is a Washington D.C.-based lobbying and PR firm founded by Democratic campaign officials.

The no bid contracts for this project are attached. The contract stated in the deliverables that records of media placement and advertising would be provided to the Secretary of State. However, in a follow up email requesting these documents the office first responded that they were compiling the documents and would need an extension of time, and then responded there were no documents responsive to the request. *Exhibit attached*. It is perplexing that there would be no documents in the custody of the office. Either the documents were never delivered by Glover Park in violation of the contract, were destroyed by the department in violation of the state retention requirements, or the records were not released upon request in violation of Colorado Open Records Law.

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In 2022, Griswold has expended yet another 1.1 million dollars in a recent television ad buy featuring herself. Not only is the campaign an unreasonable expenditure under the EAC guidance, but this campaign ad is also not an allowable use of HAVA dollars. The ad is clearly intended for campaign purposes to get out the vote and promote herself. At the conclusion of the ad, Griswold's call to action is, "Let's go vote Colorado."

<https://www.youtube.com/watch?v=YnpPb4lidto>.

EAC funding Advisory opinion FAO-08-005 specifically states that HAVA funds may not be used for "get out the vote efforts; including advertising..." If states have questions regarding the interpretation, the opinion advises they should contact the EAC for a determination. The EAC website records show no such request has been made by Colorado.

The EAC should take steps to immediately audit these funds and require Griswold to reimburse the HAVA dollars from her campaign funds.

/s/ Suzanne Taheri

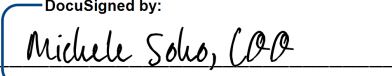
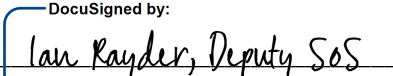
CONTRACT AMENDMENT #2

SIGNATURE AND COVER PAGE

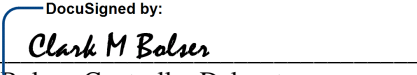
State Agency Colorado Department of State (CDOS)	Original Contract Number CMS#: 163570 CORE#: CT, VAAA, 2021-2543
Contractor The Glover Park Group, LLC	Amendment Contract Number Amendment #1: CMS#: 163906 CORE#: CT, VAAA, 2021-2543, v2 Amendment #2: CMS#: 164670 CORE#: CT, VAA, 2021-3100
Current Contract Maximum Amount Term FY 2021 Federal Funds \$2,076,800.00 FY 2021 State Matching Funds \$519,200.00	Contract Performance Beginning Date August 28, 2020
Total for All State Fiscal Years \$2,596,000.00	Current Contract Expiration Date The later of November 20, 2020 or the date on which Contractor has met any refund obligation that may exist under Milestones 2 and 3 in Exhibit A

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

CONTRACTOR The Glover Park Group, LLC DocuSigned by:  By: Michele Soho, COO Date: 10/28/2020	STATE OF COLORADO Jared S. Polis, Governor Colorado Department of State Jena Griswold, Secretary of State DocuSigned by:  By: Ian Rayden, Deputy Secretary of State Date: 10/28/2020
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In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD DocuSigned by:  By: Clark M Bolser, Controller Delegate Amendment Effective Date: 10/28/2020
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1. PARTIES

This Amendment (the “Amendment”) to the Original Contract shown on the Signature and Cover Page for this Amendment (the “Contract”) is entered into by and between the Contractor, and the State.

2. TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Contract shall be construed and interpreted in accordance with the Contract.

3. AMENDMENT EFFECTIVE DATE AND TERM

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in **§3.B** of this Amendment.

B. Amendment Term

The Parties’ respective performances under this Amendment and the changes to the Contract contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Contract.

4. PURPOSE

On August 28, 2020, the Parties entered into a contract covering the media buy for a public awareness campaign related to the COVID-19 pandemic and the November 2020 General Election. On September 2, 2020, through Amendment #1, as a result of increasing media costs, the Parties mutually agreed to increase the Maximum Amount Payable under the Contract by \$500,000.

Now, the United States Intelligence community has informed the Colorado Department of State that malicious foreign actors intend to exploit the unique circumstances created by the COVID-19 pandemic to interfere in the 2020 election. Through the spread of misinformation, these foreign actors seek to undermine the process, manner, and means by which the elction is conducted amidst the pandemic, with the state goal of endenering confusion thus sowing dowbt regarding the legitimacy of the results. The COVID-19 pandemic has created extraordinarily difficult circumstances under which to conduct an election, and the evolving threat posed by these malicious foreign actors intent on sowing chaos and confusion only serves to exacerbate these circumstances. In light of what has been learned in recent weeks about the threat these adversaries pose, it is critical voters understand that foreign actors are intent on manipulating them and they should only seek election-related information from trusted sources. As such, the Parties have mutually agreed to increase the Maximum Amount Payable by an additional \$296,000 through this Amendment #2. This will enable the Department to expand the reach of its advertising and encourage Coloradans to seek information from trusted sources to help prevent foreign actors from taking advantage of the unique circumstances created by the COVID-19 pandemic to undermine the credibility of our elections.

This amendment makes corresponding edits to Exhibit A – Statement of Work.

5. MODIFICATIONS

The Contract and all prior amendments thereto, if any, are modified as follows:

- A. The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown on the Signature and Cover Page for this Amendment.
- B. In Exhibit A, Milestone 1: Broadcast, Cable, and Digital Media Planning, prior to the bolded text reading **"Deliverable #1: A framework of the broadcast and cable media to be purchased broken down by week and market"** the following paragraph is added:
 "Upon execution of Amendment #2, Contractor shall invoice CDOS \$13,320.00 as an additional up-front payment of commission in view of increased broadcast and cable media buys."
- C. In Exhibit A, Milestone 2: Broadcast and Cable Media Buying, the following paragraph is added:
 "Upon execution of Amendment #2, Contractor shall invoice CDOS \$269,360.00 for additional approved broadcast and cable media buys."
- D. In Exhibit A, Milestone 3: Purchases for Digital Audience Targeting, the following paragraph is added:
 "Contractor shall invoice up to \$269,360.00 based on amount remaining after approved cable and broadcast media buys purchased."
- E. In Exhibit A, Milestone 4: Media Implementation and Reporting, the last paragraph is deleted and replaced with:
 Upon successful completion of all Contract Milestones and Deliverables, as determined by CDOS, Contractor shall invoice up to \$116,820.00 in accordance with the Payment and Fee Scheduled below. The actual amount of the payment shall be the Contractor's nine percent commission on gross media spend on approved media placements less the amount paid to the Contractor for this purpose as specified in Milestones #1 & #3."
- F. In Exhibit A, Invoicing, the Payment and Fee Schedule Table is replaced with the table below.

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
Milestone 1: Broadcast, Cable, and Digital Media Planning Deliverable #1 – A framework of the broadcast and cable media to be purchased broken down by week and market 1. The Contractor will provide a media plan	Upon execution of the contract and receipt of Contractor invoice	Not to Exceed \$81,000.00	50% of 9% commission on estimated gross media spend
	Upon execution of Amendment #1 and receipt of Contractor invoice	Not to exceed \$22,500.00	

Amendment Contract Number:

CMS#: 164670

CORE#: CT, VAAA, 2021-3100

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>with a weekly breakdown of General Ratings Points (GRPs) to be purchased on broadcast stations in Colorado's Designated Market Areas (DMAs) of Denver, Colorado Springs and Grand Junction.</p> <p>2. The Contractor will provide a media plan with a weekly breakdown of General Ratings Points (GRPs) to be purchased on cable stations in Colorado including Denver, Colorado Springs, Grand Junction, Durango and Cortez.</p> <p>Deliverable #2 – A framework for digital audience targeting and media spend on a weekly basis broken down by channel and message</p> <p>1. The Contractor will coordinate with CDOS to identify target audiences by digital channel (social media, digital pre-roll) and message (voter registration, voter education) using the Contractor's national voter file.</p> <p>2. The Contractor will provide a media plan breaking down estimated audience size and media spend on a weekly basis by digital channel and message.</p>	<p>Upon execution of Amendment #2 and receipt of Contractor invoice</p>	<p>Not to Exceed \$13,320.00</p>	
<p>Milestone 2: Broadcast and Cable Media Buying</p>	<p>Within two business days after CDOS approval of</p>	<p>Not to Exceed \$2,093,000.00</p>	

Amendment Contract Number:

CMS#: 164670

CORE#: CT, VAAA, 2021-3100

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Deliverable #3 – Record of all Media Placement Purchases</p> <ol style="list-style-type: none"> Contractor must provide CDOS with complete records on all media placement. Determine the file format required for the media content for each broadcast/cable station and digital platform in a manner acceptable to CDOS. Inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format. 	<p>Deliverables #1 and #2 and receipt of contractor invoice.</p> <p>Based on approved cable and broadcast media buys and receipt of Contractor Invoice</p>	<p>Not to Exceed \$269,360.00</p>	
<p>Milestone 3: Purchases for Digital Audience Targeting</p> <p>Deliverable #4 Record of All Digital Audience Targeting Purchases</p> <ol style="list-style-type: none"> Contractor must provide CDOS with complete records on all digital targeting purchases. Email of deliverable is sufficient. Contractor must determine the file format required for the media content for each digital platform and must be in a format acceptable to CDOS. Contract must inform CDOS in writing of the digital format requirements for each 	<p>Within two business days after CDOS approval to commence Milestone 3 and receipt of contractor invoice.</p>	<p>Not to Exceed \$116,820.00</p>	<p>To be calculated such that the Payment for Milestone #1 and this payment for Milestone #3 total 100% of 9% commission of gross media spend.</p>

Amendment Contract Number:

CMS#: 164670

CORE#: CT, VAAA, 2021-3100

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format.</p>			
<p>Milestone 4: Media Implementation and Reporting</p> <p>Deliverable #5: Confirmation of broadcast and cable advertising implementation</p> <ol style="list-style-type: none"> Contractor must provide CDOS with e-mail confirming broadcast and cable advertising running as scheduled <p>Deliverable #6: Reporting on digital advertising performance</p> <ol style="list-style-type: none"> The Contractor must provide identified CDOS personnel with access to an analytics dashboard showcasing data surrounding digital advertising performance broken down by digital media platform that includes daily and cumulative total impressions, daily and cumulative clicks, and daily email and 			

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
cumulative total amount spent and while campaign is live			
Maximum Amount Payable to Contractor		\$2,596,000.00	

6. LIMITS OF EFFECT AND ORDER OF PRECEDENCE

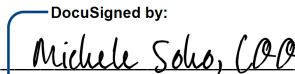
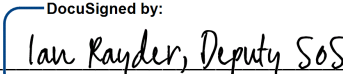
This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments or other modifications to the Contract, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract or any prior modification to the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Contract to the extent that this Amendment specifically modifies those Special Provisions.

CONTRACT AMENDMENT #1**SIGNATURE AND COVER PAGE**

State Agency Colorado Department of State (CDOS)	Original Contract Number CMS #: 163924 CORE#: CT, VAAA, 2021-2730
Contractor The Glover Park Group, LLC	Amendment Contract Number Amendment #1: CMS#: 164671 CORE#: CT, VAAA, 2021-2730, v2
Current Contract Maximum Amount Term FY 2021 Federal Funds \$163,000.00 FY 2021 State Matching Funds \$41,000.00	Contract Performance Beginning Date September 3, 2020
	Current Contract Expiration Date The later of November 3, 2020
Total for All State Fiscal Years	\$204,000.00

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

CONTRACTOR The Glover Park Group, LLC	STATE OF COLORADO Jared S. Polis, Governor Colorado Department of State Jena Griswold, Secretary of State
DocuSigned by:  By: Michele Soho, COO	DocuSigned by:  By: Ian Rayder, Deputy Secretary of State
Date: 10/28/2020	Date: 10/28/2020

In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

DocuSigned by:

By: Clark M Bolser, Controller Delegate

Amendment Effective Date: 10/28/2020

Amendment Contract Number:
CMS#: 164671
CORE#: CT VAAA 2021-2730 v2

1. PARTIES

This Amendment (the “Amendment”) to the Original Contract shown on the Signature and Cover Page for this Amendment (the “Contract”) is entered into by and between the Contractor, and the State.

2. TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Contract shall be construed and interpreted in accordance with the Contract.

3. AMENDMENT EFFECTIVE DATE AND TERM

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in **§3.B** of this Amendment.

B. Amendment Term

The Parties’ respective performances under this Amendment and the changes to the Contract contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Contract.

4. PURPOSE

On September 3, 2020, the Parties entered into a contract (CMS# 163924; CORE# CT, VAAA, 2021-2730) covering the creative production of the media campaign materials for the November 3, 2020 General Election. This Amendment #1 to the above referenced contract increases the required number of static digital graphics and provides for \$4,000 in additional costs for Milestone #2 by adding Deliverable #5.

5. MODIFICATIONS

The Contract and all prior amendments thereto, if any, are modified as follows:

- A. The Contract Initial Contract Expiration Date on the Contract’s Signature and Cover Page is hereby deleted and replaced with the Current Contract Expiration Date shown on the Signature and Cover Page for this Amendment.
- B. In Exhibit A, Milestone #1, Deliverable #1, “Development of a visual theme and production of three static digital graphics (English only)” shall be deleted and replaced with “Deveopment of a visual theme and production of five (5) static graphics (English only)”.
- C. In Exhibit A, Milestone 2: Creative Concepting and Video Production, the final paragraph shall be deleted and replaced with: “Upon successful completion of all Contract Milestones 1-2 and Deliverables 1-4 (including completion of Deliverables #3-4 on or before October 9, 2020), as well as adding Deliverable #5 for additional creative concepts, as reasonably determined by CDOS, Contractor shall invoice \$104,000.00 in accordance with the Payment and Fee Schedule below, for total payment of \$204,000.00.

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Milestone 1: Static Graphics sized for sized for Facebook, Twitter and Static Display Banners</p> <p>Deliverable #1 – Development of a visual theme and production of FIVE (5) static digital graphics (English only). Each graphic will align with a key message of the campaign</p> <ol style="list-style-type: none"> 1) The Contractor will produce a graphic encouraging citizens to register to vote sized for Facebook, Twitter and static display banners 2) The Contractor will produce a graphic encouraging voters to vote by mail to limit the spread of COVID 19 sized for Facebook, Twitter and static display banners 3) The Contractor will produce a graphic to be used 8 days before the election encourage voters to return their ballot by drop box and not the mail sized for Facebook, Twitter and static display banners 	Upon execution of the contract and receipt of Contractor invoice	\$100,000.00	
<p>Milestone 2: Creative Concepting and Video Production</p> <p>Deliverable #2: Development of creative concepts for video production</p>	Within two business days after CDOS approval of Deliverables #1 and #2 and receipt of contractor invoice.	Not to Exceed \$100,000	

Amendment Contract Number:

CMS#: 164671

CORE#: CT VAAA 2021-2730 v2

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>1) Development of at least two creative concepts (overall messaging and visual direction) for video products. CDOS will select creative concept within 3 business days of initial presentation of concept options. Upon CDOS selection of a concept, Contractor will continue to edit and refine the concept based on client discussions and feedback and as allowed by the mutually agreed-upon production calendar.</p> <p>Deliverable #3: Production of 30-second TV Spots in English and Spanish</p> <p>1) Scripting, mood boards, English & Spanish voiceover recording and licensing, a limited, no more than one-day shoot, production, editing, audio mix and shipping for at least one and up to two 30-second TV spots to align with the voter registration and voter education messages</p> <p>2) TV spots must be in correct file format for use by television stations.</p>	<p>Receipt of final invoice from Contractor</p>		

Amendment Contract Number:

CMS#: 164671

CORE#: CT VAAA 2021-2730 v2

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>3) Transcription files in English and Spanish must be loaded with spots shipped to TV stations</p> <p>Deliverable #4: Production of 15-second Digital/Pre-Roll Spots in English and Spanish</p> <p>1) Two 15-second digital/pre-roll videos in English and Spanish. The 15-second may be cut from the 30-second TV ad</p> <p>2) Digital/pre-roll spots must be in correct format for use on digital channels</p> <p>3) Transcription files in English and Spanish must be loaded with digital videos uploaded to social channels.</p> <p>Deliverable #5: CDOS to send editable creative files for existing CDOS concepts. GPG to produce the following:</p> <p>1) One round of copy edits for two (2) existing creative concepts</p> <p>2) Sizing of two existing creative designs for Facebook and multiple (7-10) static display sizes</p>			
	Receipt of final invoice from Contractor	Not to Exceed \$4,000	
Maximum Amount Payable to Contractor		\$204,000.00	

Amendment Contract Number:

CMS#: 164671

CORE#: CT VAAA 2021-2730 v2

6. LIMITS OF EFFECT AND ORDER OF PRECEDENCE

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments or other modifications to the Contract, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract or any prior modification to the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Contract to the extent that this Amendment specifically modifies those Special Provisions.

STATE OF COLORADO CONTRACT

COVER PAGE

State Agency Colorado Department of State (CDOS)	Contract Number CMS#: 163924 CORE#: CT, VAAA 2021-2730		
Contractor The Glover Park Group, LLC	Contract Performance Beginning Date The later of the Effective Date or September 3, 2020		
Contract Maximum Amount Term FY 2021 Federal Funds \$160,000.00 FY 2021 State Matching \$40,000.00 Funds Total for All State Fiscal Years \$200,000.00	Contract Expiration Date November 3, 2020 Contract Authority Due to the emerging nature of the COVID-19 pandemic and the short time remaining before the November 2020 General Election, there was insufficient time for the Department to issue a formal solicitation. The Department followed as competitive a process as possible under the circumstances and the Glover Park Group was selected and approved through a Special Circumstance Procurement request.		
Contract Purpose The COVID-19 pandemic poses an unprecedented challenge to conducting the November 3, 2020 General Election safely. To mitigate the risk of transmitting the virus through in-person voting, CDOS is executing a broad public awareness campaign to encourage voters to cast their ballots at secure ballot drop boxes or in a timely manner by mail instead of voting in-person at a Voter Service and Polling Centers (VSPCs). The campaign will also inform voters on how they may safely register to vote or change their voter registration information online during the pandemic. CDOS will use supplemental Help America Vote Act (HAVA) funds provided by the Federal Government under the Coronavirus Aid, Relief, and Economic Security (CARES) Act to pay for a portion of the cost of this contract. The balance of the cost will be paid from the required state matching funds for this grant which were authorized by the General Assembly in HB 20-1360. The Department has obtained provisional approval for these expenditures from the Election Assistance Commission (EAC), its federal partner. With competitive races for President and US Senator, the Department expects media costs to increase as the date of the election approached. As a result, at the direction of the Secretary of State, the Department executed a separate Contract to the Glover Park Group, LLC for the media buy and associated commissions (CMS: #163570 / CORE: # CT, VAAA, 2021-2543). This second Contract covers the creative production of the media campaign materials.			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"> 1. Colorado Special Provisions in §18 of the main body of this Contract. 2. The provisions of the other sections of the main body of this Contract. 3. Exhibit A, Statement of Work. 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> For the State: Ian Rayder Department of State 1700 Broadway, Suite 200 Denver, CO 80290 Ian.Rayder@SOS.STATE.CO.US </td> <td style="width: 50%; border: none;"> For Contractor: Anne O'Neil The Glover Park Group, LLC 1025 F St., 9th Floor, NW Washington, DC 20004 aoneil@gpg.com </td> </tr> </table>		For the State: Ian Rayder Department of State 1700 Broadway, Suite 200 Denver, CO 80290 Ian.Rayder@SOS.STATE.CO.US	For Contractor: Anne O'Neil The Glover Park Group, LLC 1025 F St., 9 th Floor, NW Washington, DC 20004 aoneil@gpg.com
For the State: Ian Rayder Department of State 1700 Broadway, Suite 200 Denver, CO 80290 Ian.Rayder@SOS.STATE.CO.US	For Contractor: Anne O'Neil The Glover Park Group, LLC 1025 F St., 9 th Floor, NW Washington, DC 20004 aoneil@gpg.com		

Contract Number:
 CMS#: 163924
 CORE#: CT, VAAA 2021-2730

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p align="center">CONTRACTOR The Glover Park Group, LLC</p> <p align="center">DocuSigned by: <i>Michele Soho, COO</i> 72589F949CBB42E...</p> <hr/> <p align="center">By: Michele Soho, COO 9/3/2020</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Colorado Department of State Jena Griswold, Secretary of State</p> <p align="center">DocuSigned by: <i>Ian Rayder</i> 0C649BE4B3B94F0...</p> <hr/> <p align="center">By: Ian Rayder, Deputy Secretary of State 9/3/2020</p> <p>Date: _____</p>
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In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

DocuSigned by:
Clark M Bolser
29ADEADE71B5433...

By: _____
Clark Bolser, Controller Delegate

Effective Date: 9/3/2020

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1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Contract (the “State”). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

B. Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Contract Expiration Date shown on the Cover Page for this Contract (the “Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. [Reserved] Intentionally deleted.

D. [Reserved] Intentionally deleted.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in

whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a.**

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. The State's acceptance of Work satisfactorily completed pursuant to the Contract shall not be unreasonably withheld or delayed. The State shall also reimburse Contractor for any expenses incurred in accordance with this Contract up to and through the date of termination. The State hereby acknowledges if the State requests the cancellation of a pre-approved and placed media buy, Contractor will refund the State for any the media costs that have been reimbursed by Contractor's media vendors. Contractor shall use commercially reasonable efforts to pull media and refund the State for advances paid for media that has not run for a full refund, however refunds are at the discretion of the media vendors. Contractor's commission on placed buys that are canceled will not be reimbursed, as the commission is compensation for Contractor's planning and placement services. The sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **"Business Day"** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.

- C. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- D. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- E. **“Contract”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- F. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. [Reserved] Intentionally deleted.
- I. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- J. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- K. [Reserved] Intentionally deleted.
- L. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- M. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- N. **“Term”** means the time period defined in §2.B.
- O. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.

- Q. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- R. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- S. “**Services**” means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- T. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- U. “**State Fiscal Rules**” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- V. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- W. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- X. “**Subcontractor**” means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- Y. “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- Z. “**Work**” means the Goods delivered and Services performed pursuant to this Contract.

AA. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. **STATEMENT OF WORK**

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

5. **PAYMENTS TO CONTRACTOR**

A. **Maximum Amount**

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that State Fiscal Year shown on the Cover Page for this Contract.

B. **Payment Procedures**

i. **Invoices and Payment**

- a. The State shall pay Contractor in the amounts and in accordance with the **Payment and Fee Schedule** and other conditions set forth in **Exhibit A**.
- b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State, as outlined in the Payment and Fee Schedule of **Exhibit A**.
- c. The State shall pay each invoice in accordance with the timing of the **Payment and Fee Schedule** in **Exhibit A**. If no schedule is noted in the **Payment and Fee Schedule**, The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Contract.

ii. **Interest**

Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in §2.E.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall unless prohibited by law, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Cover Page for this Contract.

C. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §14 and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date three years after the date this Contract expires or is terminated, (ii) final payment under this Contract is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State. Any audit will not include and the State will not have access to, individual payroll and personnel files; any information relating to Contractor's other clients; any of Contractor's overhead costs or related information; any information subject to restrictions in contracts with third parties; access to Contractor's IT infrastructure, servers and systems; any other internal Contractor costs or non-billable expenses; and/or any information that is subject to legal restrictions.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any applicable portions of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines communicated to (or otherwise known to) Contractor in advance of the State providing such State Confidential Information to Contractor. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with this Contract and any and all laws and regulations applicable to Contractor in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access to communicate with Contractor's Chief Technology Officer, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control

effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident. The Parties shall negotiate in good faith to determine the costs related to notifying persons who may have been impacted by the Incident and Contractor will be responsible for the agreed upon costs. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. [Reserved] Intentionally deleted.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

10. INSURANCE

Contractor and Subcontractors, shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies approved to write insurance in the State of Colorado. Contractor shall provide the State with certificates of insurance, upon reasonable request or prior to starting work under the contract.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability written on an occurrence basis and with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$10,000 medical expense any one person.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Umbrella Liability

Umbrella Liability insurance with minimum limits as follows:

- i. \$3,000,000 each occurrence; and
- ii. \$3,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor.

H. Primacy of Coverage

Coverage required of Contractor and Subcontractors shall be primary over any insurance or self-insurance program carried by Contractor or the State.

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

J. Subrogation Waiver

All insurance policies secured or maintained by Contractor and its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in

the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for any portion of the Work directly attributable to such breach for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State **(i)** secure that right to use such Work for the State and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based

on, derived from, or incorporating the Work Product (except the State Materials and Third-Party Materials). Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future solely to the extent required to fully and completely use and enjoy the Work Product pursuant to the SOW (and not on a stand-alone basis). The State may assign and license its rights under this license.

ii. [Reserved] Intentionally deleted.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, “State Materials”). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Contractor Property”). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

D. Third Party Materials

Notwithstanding anything to the contrary set forth herein, the State acknowledges that Contractor may obtain or has obtained certain materials, information, software, intellectual property and/or other items, tangible or intangible, from third parties (e.g., open source software, stock photography, images and music, etc.) that it may desire to incorporate into or otherwise use in connection with the creation and/or development of the Work Product (collectively, "Third Party Materials"). Prior to the incorporation and/or use of any Third-Party Materials in connection with the Work Product, the Contractor shall first notify the State in writing describing each Third-Party Material and the Parties shall discuss, among other things, (i) the terms and conditions pursuant to which Contractor proposes such Third-Party Materials be made available to the State and (ii) Contractor's use of alternate Third-Party Materials if such terms and conditions are unacceptable to the State. The State further acknowledges and agrees that, with respect to Third Party Materials licensed by Contractor on the State's behalf, the State shall be bound by any limitations and shall be subject to any restrictions or terms associated with the applicable third party license, as communicated to the State by Contractor; and shall receive, with respect to such third party licensed materials, only such warranties and protections as Contractor receives directly from the applicable third party licensor. Similarly, the State agrees to use Contractor Property solely as authorized by Contractor in connection with and as part of the Work Product.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations. No subcontracting shall release Contractor from its responsibility for its obligations under this Contract or any SOW. Contractor shall be responsible for the work and activities of each of its subcontractors, including compliance with the applicable terms of this Contract and any applicable SOW.

C. Binding Effect

Except as otherwise provided in § 17.A, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

K. External Terms and Conditions

- i. Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

L. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of this Contract.

M. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract shall survive the termination or expiration of this Contract and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract. Notwithstanding the foregoing, sales tax on reasonable, pre-approved out-of-pocket expenses incurred pursuant to this Contract will be reimbursed.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in § 17.A, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

T. Indemnification

i. General Indemnification

Contractor shall indemnify, defend, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including reasonable attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, defend, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including reasonable attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Contractor shall indemnify, defend, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor shall not be obligated to indemnify the Indemnified Parties if any claims result from negligence on the part of the Indemnified Parties.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., 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 (i) shall not use E-Verify Program or the program

procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK

VOTER EDUCATION EFFORT: CREATIVE PRODUCTION

Background/ Description of Services:

This Statement of Work (SOW) is part of a split purchase. The Colorado Department of State (CDOS or State) is contracting with Glover Park Group (GPG or Contractor) for Creative Production. CDOS has previously contracted with GPG (CT, VAAA, 2021-2543, CMS # 163570) for the Media Buy portion of this Voter Education Effort to secure advantageous pricing due to the daily increasing costs of these services.

The Creative Production portion of this contract will include creative concept development, design of graphics for social media, production of 30-second television commercials and production of 15-second videos for digital channels as further outlined below. The goals of the creative assets developed by GPG are to:

- 1) inform eligible Colorado residents on how to safely register to vote or change their voter registration information during the COVID-19 pandemic and
- 2) Educate registered Colorado voters on how to find out where secure ballot drop boxes are located and the benefits of returning their 2020 General Election ballots by mail or by secure ballot drop box to limit the spread of COVID-19.

Contractor shall focus first on creating voter registration content and then voter education content. The goal to be live with initial static banners by September 25th, 2020. The parties will mutually agree upon the timeline upon CDOS' selection of final creative concept.

Data:

The State must not share any PII, PHI, PCI, CJI, Tax Information or State personal records to Contractor or any of Contractor's Subcontractors.

Scope of Work:

Milestone 1: Static Graphics sized for Facebook, Twitter and Static Display Banners

Upon execution of the Creative Production contract, Contractor shall invoice CDOS \$100,000.00 as an up-front payment for services rendered. This amount is calculated as 50 percent of Contractor's overall fees for Creative Production. Within one business days of receipt of such payment, the Contractor shall deliver a visual theme (i.e. creative concept) and begin production of graphics as outlined in Deliverable #1, below:

Deliverable #1: Development of a visual theme and production of three static digital graphics (English only). Each graphic will align with a key message of the campaign.

- 1) The Contractor will produce one graphic encouraging citizens to register to vote sized for Facebook , Twitter and Static Display Banners
- 2) The Contractor will produce one graphic encouraging voters to vote by mail to limit the spread of COVID-19 sized for Facebook, Twitter and Static Display Banners
- 3) The Contractor will produce one graphic to be used 8 calendar days before the election encouraging voters to return their ballot by drop box and not by mail sized for Facebook, Twitter and Static Display Banners

Milestone 2: Creative Concepting and Video Production

Within three days of execution of the Creative Production contract, Contractor shall provide Deliverable #2 for review by CDOS. Upon CDOS approval of Deliverable #2, Contractor shall begin execution on Deliverables #3-4. Deliverables #3-4 must be executed such that both TV and digital spots can begin airing as early as September 25, 2020 if production schedule allows, and no later than October 9, 2020.

After October 9, 2020, the value of the advertising will be so far diminished that Deliverable #3-4 will not be of value to the CDOS and will be deemed uncompleted for the purpose of this contract. Both parties will take commercially reasonable efforts to complete their respective action items in alignment with the mutually agreed upon schedule. Contractor shall not be liable for delays caused by events that are outside of Contractor's control (e.g. CDOS delays in selection of creative concepts, etc.).

Deliverable #2: Development of creative concepts for video production

- 1) Development of at least two creative concepts (overall messaging and visual direction) for video products. CDOS will select creative concept within 3 business days of initial presentation of concept options. Upon CDOS selection of a concept, Contractor will continue to edit and refine the concept based on client discussions and feedback and as allowed by the mutually agreed-upon production calendar.
- 2) Scripting and mood boards for the production of 30-second TV spots in English and Spanish, reflective of the approved creative concepts.

Deliverable #3: Production of 30-second TV Spots in English and Spanish

- 1) English & Spanish voiceover recording and licensing; stock selection and licensing; a limited, no more than one-day shoot; production; editing; audio mix; and shipping for at least 1 and up to 2 30-second TV spots to align with the voter registration and voter education messages.
- 2) TV spots must be in correct file format for use by television stations.
- 3) Transcription files in English and Spanish must be loaded with spots shipped to TV stations.

Deliverable #4: Production of 15-second Digital/Pre-Roll Spots in English and Spanish

- 1) Two 15-second digital/pre-roll videos in English and Spanish. The 15-second may be cut from the 30-second TV ad
- 2) Digital/pre-roll spots must be in correct format for use on digital channels.
- 3) Transcription files in English and Spanish must be loaded with digital videos uploaded to social channels.

Upon successful completion of all Contract Milestones 1-2 and Deliverables 1-4 (including completion of Deliverables #3-4 on or before October 9, 2020), as reasonably determined by CDOS, Contractor shall invoice \$100,000.00 in accordance with the Payment and Fee Scheduled below, for total payment of \$200,000.

Payment and Fee Schedule:

To help ensure prompt payment of invoices, CDOS strongly encourages Contractor to register with the State for electronic payments.

Payments to Contractor are based upon the successful completion of Milestone and Deliverables as determined by CDOS. The State has no liability for any costs in excess of the Maximum Amount Payable to Contractor as shown on the Contract Cover Page and in the Payment and Fee Schedule below unless this contract is first modified through a formal contract amendment.

Invoicing:

Contractor shall submit invoices to the State in accordance with the table below, except that any deadlines apart from the table may be adjusted by mutual written agreement of the Contractor and the State. Exclusively for the purposes of modifying deadlines in this Contract, e-mail shall suffice as sufficient written documentation. Invoices must be sent to finance@sos.state.co.us referencing the Contract Number provided in the Contract Cover Page.

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Milestone 1: Static Graphics sized for sized for Facebook, Twitter and Static Display Banners</p> <p>Deliverable #1 – Development of a visual theme and production of three static digital graphics (English only). Each graphic will align with a key message of the campaign</p> <ol style="list-style-type: none"> 1) The Contractor will produce a graphic encouraging citizens to register to vote sized for Facebook, Twitter and static display banners 2) The Contractor will produce a graphic encouraging voters to vote by mail to limit the spread of COVID 19 sized for Facebook, Twitter and static display banners 3) The Contractor will produce a graphic to be used 8 days before the election encourage voters to return their ballot by drop box and not the mail sized for Facebook, Twitter and static display banners 	Upon execution of the contract and receipt of Contractor invoice	\$100,000.00	
Milestone 2: Creative Concepting and Video	Within two business days after CDOS	Not to Exceed \$100,000.00	

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Production</p> <p>Deliverable #2: Development of creative concepts for video production</p> <p>1) Development of at least two creative concepts (overall messaging and visual direction) for video products. CDOS will select creative concept within 3 business days of initial presentation of concept options. Upon CDOS selection of a concept, Contractor will continue to edit and refine the concept based on client discussions and feedback and as allowed by the mutually agreed-upon production calendar.</p> <p>Deliverable #3: Production of 30-second TV Spots in English and Spanish</p> <p>1) Scripting, mood boards, English & Spanish voiceover recording and licensing, a limited, no more than one-day shoot, production, editing, audio mix and shipping for at least one and up to two 30-second TV spots to align with the voter registration and voter education messages</p>	<p>approval of Deliverables #1 and #2 and receipt of contractor invoice.</p>		

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>2) TV spots must be in correct file format for use by television stations.</p> <p>3) Transcription files in English and Spanish must be loaded with spots shipped to TV stations</p> <p>Deliverable #4: Production of 15-second Digital/Pre-Roll Spots in English and Spanish</p> <p>1) Two 15-second digital/pre-roll videos in English and Spanish. The 15-second may be cut from the 30-second TV ad</p> <p>2) Digital/pre-roll spots must be in correct format for use on digital channels</p> <p>3) Transcription files in English and Spanish must be loaded with digital videos uploaded to social channels.</p>			
Maximum Amount Payable to Contractor		\$200,000.00	

STATE OF COLORADO CONTRACT

COVER PAGE

State Agency Colorado Department of State (CDOS)	Contract Number CMS#: 163570 CORE#: CT, VAAA 2021-2543		
Contractor The Glover Park Group, LLC	Contract Performance Beginning Date The later of the Effective Date or August 20, 2020		
Contract Maximum Amount Term FY 2021 Federal Funds \$1,440,000.00 FY 2021 State Matching \$360,000.00 Funds Total for All State Fiscal Years \$1,800,000.00	Contract Expiration Date The later of November 20, 2020 or the date on which Contractor has met any refund obligation that may exist under Milestones 2 and 3 in Exhibit A Contract Authority Due to the emerging nature of the COVID-19 pandemic and the short time remaining before the November 2020 General Election, there was insufficient time for the Department to issue a formal solicitation. The Department followed as competitive a process as possible under the circumstances and the Glover Park Group was selected and approved through a Special Circumstance Procurement request.		
Contract Purpose The COVID-19 pandemic poses an unprecedented challenge to conducting the November 3, 2020 General Election safely. To mitigate the risk of transmitting the virus through in-person voting, CDOS is executing a broad public awareness campaign to encourage voters to cast their ballots at secure ballot drop boxes or in a timely manner by mail instead of voting in-person at a Voter Service and Polling Centers (VSPCs). The campaign will also inform voters on how they may safely register to vote or change their voter registration information online during the pandemic. CDOS will use supplemental Help America Vote Act (HAVA) funds provided by the Federal Government under the Coronavirus Aid, Relief, and Economic Security (CARES) Act to pay for a portion of the cost of this contract. The balance of the cost will be paid from the required state matching funds for this grant which were authorized by the General Assembly in HB 20-1360. The Department has obtained provisional approval for these expenditures from the Election Assistance Commission (EAC), its federal partner. With competitive races for President and US Senator, the Department expects media costs to increase as the date of the election approached. As a result, at the direction of the Secretary of State, the Department intends to issue this Contract to the Glover Park Group, LLC for the media buy and associated commissions and a second contract for the production of the media campaign materials.			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: 1. Exhibit A – Statement of Work In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: 1. Colorado Special Provisions in §18 of the main body of this Contract. 2. The provisions of the other sections of the main body of this Contract. 3. Exhibit A, Statement of Work.			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"> For the State: Ian Rayder Department of State 1700 Broadway, Suite 200 Denver, CO 80290 Ian.Rayder@SOS.STATE.CO.US </td> <td style="width: 50%; border: none;"> For Contractor: Anne O'Neil The Glover Park Group, LLC 1025 F St., 9th Floor, NW Washington, DC 20004 aoneil@gpg.com </td> </tr> </table>		For the State: Ian Rayder Department of State 1700 Broadway, Suite 200 Denver, CO 80290 Ian.Rayder@SOS.STATE.CO.US	For Contractor: Anne O'Neil The Glover Park Group, LLC 1025 F St., 9 th Floor, NW Washington, DC 20004 aoneil@gpg.com
For the State: Ian Rayder Department of State 1700 Broadway, Suite 200 Denver, CO 80290 Ian.Rayder@SOS.STATE.CO.US	For Contractor: Anne O'Neil The Glover Park Group, LLC 1025 F St., 9 th Floor, NW Washington, DC 20004 aoneil@gpg.com		

Contract Number:
 CMS#: 163570
 CORE#: CT, VAAA 2021-2543

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p align="center">CONTRACTOR The Glover Park Group, LLC</p> <p align="center">DocuSigned by: <i>Michele Soho</i> <small>72589F949CBB42E...</small></p> <hr/> <p align="center">By: Michele Soho, COO</p> <p>Date: <u>8/28/2020</u></p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Colorado Department of State Jena Griswold, Secretary of State</p> <p align="center">DocuSigned by: <i>Ian Rayder</i> <small>0C619BE4B3B94F0...</small></p> <hr/> <p align="center">By: Ian Rayder, Deputy Secretary of State</p> <p>Date: <u>8/28/2020</u></p>
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In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

DocuSigned by:
Clark Bolser
29ADEADE71B5433...

By: _____
Clark Bolser, Controller Delegate

Effective Date: 8/28/2020

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1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Contract (the “State”). Contractor and the State agree to the terms and conditions in this Contract.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Contract shall not be valid or enforceable until the Effective Date. The State shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

B. Term

The Parties’ respective performances under this Contract shall commence on the Contract Performance Beginning Date shown on the Cover Page for this Contract and shall terminate on the Contract Expiration Date shown on the Cover Page for this Contract (the “Term”) unless sooner terminated or further extended in accordance with the terms of this Contract.

C. [Reserved] Intentionally deleted.

D. [Reserved] Intentionally deleted.

E. Early Termination in the Public Interest

The State is entering into this Contract to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Contract ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract in

whole or in part. A determination that this Contract should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by **§12.A.i.**

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a.**

iii. Payments

If the State terminates this Contract in the public interest, the State shall pay Contractor an amount equal to the percentage of the total reimbursement payable under this Contract that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. The State's acceptance of Work satisfactorily completed pursuant to the Contract shall not be unreasonably withheld or delayed. The State shall also reimburse Contractor for any expenses incurred in accordance with this Contract up to and through the date of termination. The State hereby acknowledges if the State requests the cancellation of a pre-approved and placed media buy, Contractor will refund the State for any the media costs that have been reimbursed by Contractor's media vendors. Contractor shall use commercially reasonable efforts to pull media and refund the State for advances paid for media that has not run for a full refund, however refunds are at the discretion of the media vendors. Contractor's commission on placed buys that are canceled will not be reimbursed, as the commission is compensation for Contractor's planning and placement services. The sum of any and all reimbursement shall not exceed the maximum amount payable to Contractor hereunder.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Breach of Contract"** means the failure of a Party to perform any of its obligations in accordance with this Contract, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Contract, then such debarment or suspension shall constitute a breach.
- B. **"Business Day"** means any day other than Saturday, Sunday, or a Legal Holiday as listed in §24-11-101(1), C.R.S.

- C. **“Chief Procurement Officer”** means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202(6), C.R.S. to procure or supervise the procurement of all supplies and services needed by the state.
- D. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- E. **“Contract”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- F. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- G. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- H. [Reserved] Intentionally deleted.
- I. **“Effective Date”** means the date on which this Contract is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Contract. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then the Effective Date of this Contract shall be the later of the date on which this Contract is approved and signed by the State’s Chief Information Officer or authorized delegate or the date on which this Contract is approved and signed by the State Controller or authorized delegate, as shown on the Signature Page for this Contract.
- J. **“Exhibits”** means the exhibits and attachments included with this Contract as shown on the Cover Page for this Contract.
- K. [Reserved] Intentionally deleted.
- L. **“Goods”** means any movable material acquired, produced, or delivered by Contractor as set forth in this Contract and shall include any movable material acquired, produced, or delivered by Contractor in connection with the Services.
- M. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.
- N. **“Term”** means the time period defined in §2.B.
- O. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.

- Q. “**PII**” means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- R. “**PHI**” means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- S. “**Services**” means the services to be performed by Contractor as set forth in this Contract, and shall include any services to be rendered by Contractor in connection with the Goods.
- T. “**State Confidential Information**” means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- U. “**State Fiscal Rules**” means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- V. “**State Fiscal Year**” means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- W. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- X. “**Subcontractor**” means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- Y. “**Tax Information**” means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
- Z. “**Work**” means the Goods delivered and Services performed pursuant to this Contract.

AA. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Contract.

5. PAYMENTS TO CONTRACTOR

A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the Contract Funds. The State shall not pay Contractor any amount under this Contract that exceeds the Contract Maximum for that State Fiscal Year shown on the Cover Page for this Contract.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Contractor in the amounts and in accordance with the **Payment and Fee Schedule** and other conditions set forth in **Exhibit A**.
- b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State, as outlined in the Payment and Fee Schedule of **Exhibit A**.
- c. The State shall pay each invoice in accordance with the timing of the **Payment and Fee Schedule** in **Exhibit A**. If no schedule is noted in the **Payment and Fee Schedule**, The State shall pay each invoice within 45 days following the State’s receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Contract.

ii. Interest

Amounts not paid by the State within 45 days of the State’s acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Contractor shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of day’s interest to be paid and the interest rate.

iii. Payment Disputes

If Contractor disputes any calculation, determination or amount of any payment, Contractor shall notify the State in writing of its dispute within 30 days following the earlier to occur of Contractor's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Contractor and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Contractor beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in §2.E.

6. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §16 or pursuant to any other Exhibit, for any contract having a term longer than three months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall unless prohibited by law, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified on the Cover Page for this Contract.

C. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §14 and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Contract. This section shall not apply if the Contract Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: (i) the date three years after the date this Contract expires or is terminated, (ii) final payment under this Contract is made, (iii) the resolution of any pending Contract matters, or (iv) if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State. Any audit will not include and the State will not have access to, individual payroll and personnel files; any information relating to Contractor's other clients; any of Contractor's overhead costs or related information; any information subject to restrictions in contracts with third parties; access to Contractor's IT infrastructure, servers and systems; any other internal Contractor costs or non-billable expenses; and/or any information that is subject to legal restrictions.

C. Monitoring

The State, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any applicable portions of any final audit report of an audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Contract, permitted by law or approved in writing by the State. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines communicated to (or otherwise known to) Contractor in advance of the State providing such State Confidential Information to Contractor. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Contract as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Contract, if applicable. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Contractor may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with this Contract and any and all laws and regulations applicable to Contractor in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Contractor shall provide the State with access to communicate with Contractor's Chief Technology Officer, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control

effectiveness. Upon the expiration or termination of this Contract, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident. The Parties shall negotiate in good faith to determine the costs related to notifying persons who may have been impacted by the Incident and Contractor will be responsible for the agreed upon costs. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may, in its sole discretion, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract, including the requirements of any Exhibits hereto, at all times.

F. [Reserved] Intentionally deleted.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

10. INSURANCE

Contractor and Subcontractors, shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies approved to write insurance in the State of Colorado. Contractor shall provide the State with certificates of insurance, upon reasonable request or prior to starting work under the contract.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability written on an occurrence basis and with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$10,000 medical expense any one person.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Umbrella Liability

Umbrella Liability insurance with minimum limits as follows:

- i. \$3,000,000 each occurrence; and
- ii. \$3,000,000 general aggregate.

E. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

F. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- i. \$1,000,000 each occurrence; and
- ii. \$1,000,000 general aggregate.

G. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor.

H. Primacy of Coverage

Coverage required of Contractor and Subcontractors shall be primary over any insurance or self-insurance program carried by Contractor or the State.

I. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

J. Subrogation Waiver

All insurance policies secured or maintained by Contractor and its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

K. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintain at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

L. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party. Notwithstanding any provision of this Contract to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part or institute any other remedy in this Contract in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Contract in whole or in part or institute any other remedy in this Contract as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor is in breach under any provision of this Contract and fails to cure such breach, the State, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Contract or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Contractor's uncured breach, the State may terminate this entire Contract or any part of this Contract. Contractor shall continue performance of this Contract to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Contractor for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in

the public interest, and the rights and obligations of the Parties shall be as if this Contract had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor, and the State may withhold payment to Contractor for any portion of the Work directly attributable to such breach for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Contractor is determined.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Contractor after the suspension of performance.

b. Withhold Payment

Withhold payment to Contractor until Contractor corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Contractor's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Contractor's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Contract is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State **(i)** secure that right to use such Work for the State and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State

B. Contractor's Remedies

If the State is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of the State Agency named on the Cover Page of this Contract as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Contract shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth below or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Contract. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Contract. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based

on, derived from, or incorporating the Work Product (except the State Materials and Third-Party Materials). Whether or not Contractor is under contract with the State at the time, Contractor shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Contractor hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Contractor cannot make any of the assignments required by this section, Contractor hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future solely to the extent required to fully and completely use and enjoy the Work Product pursuant to the SOW (and not on a stand-alone basis). The State may assign and license its rights under this license.

ii. [Reserved] Intentionally deleted.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Contract, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, “State Materials”). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Contract without the prior written consent of the State. Upon termination of this Contract for any reason, Contractor shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Contractor under the Contract, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Contractor Property”). Contractor Property shall be licensed to the State as set forth in this Contract or a State approved license agreement: **(i)** entered into as exhibits to this Contract; **(ii)** obtained by the State from the applicable third-party vendor; or **(iii)** in the case of open source software, the license terms set forth in the applicable open source license agreement.

D. Third Party Materials

Notwithstanding anything to the contrary set forth herein, the State acknowledges that Contractor may obtain or has obtained certain materials, information, software, intellectual property and/or other items, tangible or intangible, from third parties (e.g., open source software, stock photography, images and music, etc.) that it may desire to incorporate into or otherwise use in connection with the creation and/or development of the Work Product (collectively, "Third Party Materials"). Prior to the incorporation and/or use of any Third-Party Materials in connection with the Work Product, the Contractor shall first notify the State in writing describing each Third-Party Material and the Parties shall discuss, among other things, (i) the terms and conditions pursuant to which Contractor proposes such Third-Party Materials be made available to the State and (ii) Contractor's use of alternate Third-Party Materials if such terms and conditions are unacceptable to the State. The State further acknowledges and agrees that, with respect to Third Party Materials licensed by Contractor on the State's behalf, the State shall be bound by any limitations and shall be subject to any restrictions or terms associated with the applicable third party license, as communicated to the State by Contractor; and shall receive, with respect to such third party licensed materials, only such warranties and protections as Contractor receives directly from the applicable third party licensor. Similarly, the State agrees to use Contractor Property solely as authorized by Contractor in connection with and as part of the Work Product.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, 24-102-206, 24-106-106, and 24-106-107, C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

17. GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations. No subcontracting shall release Contractor from its responsibility for its obligations under this Contract or any SOW. Contractor shall be responsible for the work and activities of each of its subcontractors, including compliance with the applicable terms of this Contract and any applicable SOW.

C. Binding Effect

Except as otherwise provided in § 17.A, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

I. Modification

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Contract to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

K. External Terms and Conditions

- i. Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Contract.

L. Severability

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of this Contract.

M. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract shall survive the termination or expiration of this Contract and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Contract. Notwithstanding the foregoing, sales tax on reasonable, pre-approved out-of-pocket expenses incurred pursuant to this Contract will be reimbursed.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in § 17.A, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to this Contract, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

T. Indemnification

i. General Indemnification

Contractor shall indemnify, defend, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including reasonable attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, defend, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including reasonable attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

iii. Intellectual Property Indemnification

Contractor shall indemnify, defend, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor shall not be obligated to indemnify the Indemnified Parties if any claims result from negligence on the part of the Indemnified Parties.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., 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 **(i)** shall not use E-Verify Program or the program

procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

EXHIBIT A, STATEMENT OF WORK

VOTER EDUCATION EFFORT: MEDIA BUY

Background/ Description of Services:

This Statement of Work (SOW) is part of a split purchase. The Colorado Department of State (CDOS) is contracting with Glover Park Group (GPG or Contractor) for the Media Buy portion of this Voter Education Effort to secure advantageous pricing due to the daily increasing costs of these services. CDOS intends to enter into a second contract with the same vendor for the production work at a later date. If the production contract does not get executed with GPG and the media buys have not been procured, the state would be eligible for a refund of the majority of costs associated with this Media Buy contract, dependent on when it was determined that the vendor was unable to do the production work.

GPG will be planning and providing placement services for digital and television media buys. The goals of these media buys are to:

- 1) inform eligible Colorado residents on how to safely register to vote or change their voter registration information during the COVID-19 pandemic and
- 2) encourage registered Colorado voters to return their ballots by mail or by secure ballot drop box for the 2020 General Election to limit the spread of COVID-19.

Data:

The State must not share any PII, PHI, PCI, CJI, Tax Information or State personal records to Contractor or any of Contractor's Subcontractors.

Scope of Work:

Milestone 1: Broadcast, Cable, and Digital Media Planning

Upon execution of the Media Buy contract, Contractor shall invoice CDOS \$81,000.00 as an up-front payment of commission. This amount is calculated as 50 percent of Contractor's estimated commission on gross media spend on approved media placements. Contractor's actual total commission shall be calculated as nine percent of gross media spend on approved media placements.

Within two business days of receipt of such payment, the Contractor shall deliver a media plan consisting of the work product outlined in Deliverable #1 and #2, below:

Deliverable #1: A framework of the broadcast and cable media to be purchased broken down by week and market

- 1) The Contractor will provide a media plan with a weekly breakdown of General Ratings Points (GRPs) to be purchased on broadcast stations in Colorado's Designated Market Areas (DMAs) of Denver, Colorado Springs, and Grand Junction.
- 2) The Contractor will provide a media plan with a weekly breakdown of GRPs to be purchased on cable stations in Colorado including Denver, Colorado Springs, Grand Junction, Durango, and Cortez.

Deliverable #2: A framework for digital audience targeting and media spend on a weekly basis broken down by channel and message or as otherwise agreed upon by the parties.

- 1) The Contractor will coordinate with CDOS to identify target audiences by digital channel (social media, digital pre-roll) and message (voter registration, voter education) using the Contractor's national voter file.
- 2) The Contractor will provide a media plan breaking down estimated audience size and media spend on a weekly basis by digital channel and message or as otherwise agreed upon by the parties.

Any adjustments in the two-business day deadline for this Deliverables #1 and #2 must be approved in writing by CDOS. Email communication shall serve as sufficient documentation of approval. Absent circumstances outside the control of either party, each day of unapproved delay in the delivery of Deliverables #1 and #2 will result in a 1% decrease in the total amount of the commission paid to Contractor.

Within two business days of receipt of Deliverable #1 and #2, CDOS will provide approval of the media plan in writing. Email communication and CDOS' signature on a media authorization form shall serve as sufficient documentation of approval. Based on the approved media plan, Contractor shall invoice CDOS detailing the total cost of the broadcast and cable media purchases as outlined by the plan.

Milestone 2: Broadcast and Cable Media Buying

Within two business days of the approval of Deliverables #1 and #2 and the receipt of Contractor invoice for approved broadcast and cable media purchases, CDOS shall process payment to Contractor of up to \$1,638,000.00 for the approved broadcast and cable media buys as outlined in Deliverable #1. The actual amount paid by CDOS will be determined by the Contractor's actual cost of the agreed upon broadcast and cable media buys.

Within two business days of receipt of payment, Contractor must order and authorize purchase of all broadcast and cable media buys. If Contractor is unable to complete the purchase of reasons outside of its control, Contractor will notify and seek approval in writing from CDOS. Absent that approval, each single day of delay in completion of the media buys will result in a 1% reduction in the total commission paid to Contractor under this contract. Contractor will exercise all commercially reasonable efforts to make all purchases at the most favorable rates available, audit invoices received, and arrange for buys to be made within discount terms, when available.

Deliverable #3: Record of All Media Placement Purchases

- 1) Contractor must provide CDOS with complete records on all broadcast and cable media placements. Email of deliverable is sufficient.
- 2) Contractor must determine the file format required for the media content for each broadcast/cable station and must be in a format acceptable to CDOS. Contractor must inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format.

If the Contractor spends less on media buys than is indicated on the invoice, Contractor must provide documentation of the difference to CDOS. Upon written agreement with CDOS, any difference may be spent on digital audience targeting as outlined in Milestone 3. If no such written agreement is reached, Contractor must use commercially reasonable efforts to refund the difference to CDOS within 90 days of Contractor's receipt of the payment.

Milestone 3: Purchases for Digital Audience Targeting

At a time mutually agreed upon by the Contractor and CDOS, but in no event later than October 5, 2020, Contractor shall invoice for any remaining amount of the \$1,638,000.00 allocated for media buys in the media

plan (Deliverables #1 and #2) not already spent on Broadcast and Cable Media buying, for the purchase of digital audience targeting agreed upon in Deliverable #2. Prior to the placement of any advertising, the CDOS will pay Contractor all funds necessary for placing the media buy so long as the CDOS has approved the media buy costs in advance.

Deliverable #4: Record of All Digital Audience Targeting Purchases

- 1) Contractor must provide CDOS with complete records on all digital targeting purchases. Email of deliverable is sufficient.
- 2) Contractor must determine the file format required for the media content for each digital platform. Contract must inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format.

If the Contractor spends less on digital audience targeting than indicated on the invoice, Contractor must provide documentation of the difference to CDOS. Upon written agreement with CDOS, any difference may also be spent on broadcast/cable media buys, as outlined in Milestone 2. If no such written agreement is reached, Contractor must use commercially reasonable efforts to refund the difference to CDOS within 90 days of Contractor's receipt of the payment.

Milestone 4: Media Implementation and Reporting

Upon receipt of completed and approved media content, Contractor shall ensure that all materials are delivered to broadcast/cable stations and digital media platforms in a format useable by the station or platform. Contractor shall ensure that all content provided to the station or platform are within sufficient time to permit launch of the content on the date determined by the parties, but in any event, no later than October 9, 2020, unless payment has not been received by Contractor. Contractor shall provide reporting to CDOS in the manner designated in Deliverables #3 and #4.

Deliverable #5: Confirmation of broadcast and cable advertising implementation

- 1) Contractor must provide CDOS with e-mail confirmations of broadcast and cable advertising running as scheduled.

Deliverable #6: Reporting on digital advertising performance

- 1) The Contractor must provide identified CDOS personnel with access to an analytics dashboard showcasing data surrounding digital advertising performance broken down by digital media platform that includes daily and cumulative total impressions, daily and cumulative clicks, and daily and cumulative total amount spent and while campaign is live.

Based upon the analytics and summary reports provided by Contractor on a mutually agreed upon basis, CDOS may choose to reallocate targeting or alter ads from the media plan developed in Deliverables #1 and #2. So long as those changes do not incur additional costs, they will not be viewed as a material change to the contract terms. If additional costs are incurred, CDOS and Contractor agree to amend the contract and SOW to account for those additional funds, as required by law and Fiscal and Procurement Rules.

Within two business days after CDOS approval to commence Milestone 3 and receipt of contractor invoice, Contractor shall invoice up to \$81,000.00 in accordance with the Payment and Fee Scheduled below. The actual amount of the payment shall be the Contractor's nine percent commission on gross media spend on approved media placements less the amount paid to the Contractor for this purpose as specified in Milestone #1.

Upon successful completion of all Contract Milestones and Deliverables, as determined by CDOS, Contractor shall invoice up to \$81,000.00 in accordance with the Payment and Fee Scheduled below. The actual amount of the payment shall be the Contractor's nine percent commission on gross media spend on approved media placements less the amount paid to the Contractor for this purpose as specified in Milestones #1 & #3.

Payment and Fee Schedule:

To help ensure prompt payment of invoices, CDOS strongly encourages Contractor to register with the State for electronic payments.

Payments to Contractor are based upon the successful completion of Milestone and Deliverables as determined by CDOS. The State has no liability for any costs in excess of the Maximum Amount Payable to Contractor as shown on the Contract Cover Page and in the Payment and Fee Schedule below unless this contract is first modified through a formal contract amendment.

Invoicing:

Contractor shall submit invoices to the State in accordance with the table below, except that any deadlines apart from the table may be adjusted by mutual written agreement of the Contractor and the State. Exclusively for the purposes of modifying deadlines in this Contract, e-mail shall suffice as sufficient written documentation. Invoices must be sent to finance@sos.state.co.us referencing the Contract Number provided in the Contract Cover Page.

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Milestone 1: Broadcast, Cable, and Digital Media Planning</p> <p>Deliverable #1 – A framework of the broadcast and cable media to be purchased broken down by week and market</p> <ol style="list-style-type: none"> 1. The Contractor will provide a media plan with a weekly breakdown of General Ratings Points (GRPs) to be purchased on broadcast stations in Colorado's Designated Market Areas (DMAs) of Denver, Colorado Springs and Grand Junction. 2. The Contractor will provide a media plan with a weekly breakdown of General Ratings Points (GRPs) to be purchased on cable stations in Colorado including Denver, Colorado 	<p>Upon execution of the contract and receipt of Contractor invoice</p>	<p>Not to Exceed \$81,000.00</p>	<p>50% of 9% commission on estimated gross media spend</p>

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Springs, Grand Junction, Durango and Cortez.</p> <p>Deliverable #2 – A framework for digital audience targeting and media spend on a weekly basis broken down by channel and message</p> <ol style="list-style-type: none"> 1. The Contractor will coordinate with CDOS to identify target audiences by digital channel (social media, digital pre-roll) and message (voter registration, voter education) using the Contractor’s national voter file. 2. The Contractor will provide a media plan breaking down estimated audience size and media spend on a weekly basis by digital channel and message. 			
<p>Milestone 2: Broadcast and Cable Media Buying</p> <p>Deliverable #3 – Record of all Media Placement Purchases</p> <ol style="list-style-type: none"> 1. Contractor must provide CDOS with complete records on all media placement. 2. Determine the file format required for the media content for each broadcast/cable station and digital platform in a manner acceptable to CDOS. Inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and 	<p>Within two business days after CDOS approval of Deliverables #1 and #2 and receipt of contractor invoice.</p>	<p>Not to Exceed \$1,638,000.00</p>	

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
delivering the media content in the correct format.			
<p>Milestone 3: Purchases for Digital Audience Targeting</p> <p>Deliverable #4 Record of All Digital Audience Targeting Purchases</p> <ol style="list-style-type: none"> 1. Contractor must provide CDOS with complete records on all digital targeting purchases. Email of deliverable is sufficient. 2. Contractor must determine the file format required for the media content for each digital platform and must be in a format acceptable to CDOS. Contract must inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format. 	Within two business days after CDOS approval to commence Milestone 3 and receipt of contractor invoice.	Not to Exceed \$81,000.00	To be calculated such that the Payment for Milestone #1 and this payment for Milestone #3 total 100% of 9% commission of gross media spend.
<p>Milestone 4: Media Implementation and Reporting</p> <p>Deliverable #5: Confirmation of broadcast and cable advertising implementation</p> <ol style="list-style-type: none"> 1. Contractor must provide CDOS with e-mail confirming broadcast and cable advertising running as scheduled 			

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Deliverable #6: Reporting on digital advertising performance</p> <p>1. The Contractor must provide identified CDOS personnel with access to an analytics dashboard showcasing data surrounding digital advertising performance broken down by digital media platform that includes daily and cumulative total impressions, daily and cumulative clicks, and daily email and cumulative total amount spent and while campaign is live</p>			
Maximum Amount Payable to Contractor		\$1,800,000.00 -	

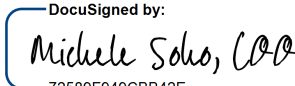

CONTRACT AMENDMENT #1

SIGNATURE AND COVER PAGE

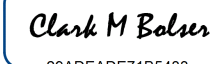
State Agency Colorado Department of State (CDOS)	Original Contract Number CMS#: 163570 CORE#: CT, VAAA, 2021-2543
Contractor The Glover Park Group, LLC	Amendment Contract Number CMS#: 163906 CORE#: CT, VAAA, 2021-2543, v2
Current Contract Maximum Amount Term FY 2021 Federal Funds \$1,840,000.00 FY 2021 State Matching Funds \$460,000.00	Contract Performance Beginning Date August 28, 2020
Total for All State Fiscal Years \$2,300,000.00	Current Contract Expiration Date The later of November 20, 2020 or the date on which Contractor has met any refund obligation that may exist under Milestones 2 and 3 in Exhibit A

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

CONTRACTOR The Glover Park Group, LLC DocuSigned by:  _____ By: Michele Soho, COO 9/2/2020 Date: _____	STATE OF COLORADO Jared S. Polis, Governor Colorado Department of State Jena Griswold, Secretary of State DocuSigned by:  _____ By: Ian Rayder, Deputy Secretary of State 9/2/2020 Date: _____
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In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD DocuSigned by:  _____ By: Clark Bolser, Controller Delegate Amendment Effective Date: 9/2/2020
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1. PARTIES

This Amendment (the “Amendment”) to the Original Contract shown on the Signature and Cover Page for this Amendment (the “Contract”) is entered into by and between the Contractor, and the State.

2. TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Contract shall be construed and interpreted in accordance with the Contract.

3. AMENDMENT EFFECTIVE DATE AND TERM

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in **§3.B** of this Amendment.

B. Amendment Term

The Parties’ respective performances under this Amendment and the changes to the Contract contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Contract.

4. PURPOSE

This contract covers the media buy for a public awareness campaign related to the COVID-19 pandemic and the November 2020 General Election. During the negotiation of the Contract (CMS# 163570) and prior to its Effective Date, the cost of media points increased. Consequently, as it stands, the public awareness campaign will not reach the planned audience. Given the threat posed by the COVID-19 pandemic, it is essential that this public awareness campaign to direct voters to cast ballots at secure ballot drop boxes or in a timely manner by mail, instead of voting in-person at a Voter Service and Polling Center (VSPC) reach its full intended audience.

Therefore, the parties have mutually agreed to increase the Maximum Amount Payable, as shown on the cover page, by \$500,000.00 in order that the public awareness campaign may reach its full intended audience. This amendment makes corresponding edits to Exhibit A – Statement of Work.

5. MODIFICATIONS

The Contract and all prior amendments thereto, if any, are modified as follows:

- A. The Contract Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Contract Maximum Amount table shown on the Signature and Cover Page for this Amendment.
- B. In Exhibit A, Milestone 1: Broadcast, Cable, and Digital Media Planning, prior to the bolded text reading "**Deliverable #1: A framework of the broadcast and cable media to be purchased broken down by week and market**" the following paragraph is added:
"Upon execution of Amendment #1, Contractor shall invoice CDOS \$22,500.00 as an additional up-front payment of commission in view of increased broadcast and cable media buys."
- C. In Exhibit A, Milestone 2: Broadcast and Cable Media Buying, the first paragraph is deleted and replaced with the following text:
"Within two business days of the approval of Deliverables #1 and #2 and the receipt of Contractor invoice for approved broadcast and cable media purchases, CDOS shall process payment to Contractor of up to \$2,093,000.00 for the approved broadcast and cable media buys as outlined in Deliverable #1. The actual amount paid by CDOS will be determined by the Contractor's actual cost of the agreed upon broadcast and cable media buys."
- D. In Exhibit A, Milestone 3: Purchases for Digital Audience Targeting, the first paragraph is deleted and replaced with the following text:
"At a time mutually agreed upon by the Contractor and CDOS, but in no event later than October 5, 2020, Contractor shall invoice for any remaining amount of the \$2,093,000.00 allocated for media buys in the media plan (Deliverables #1 and #2) not already spent on Broadcast and Cable Media buying, for the purchase of digital audience targeting agreed upon in Deliverable #2. Prior to the placement of any advertising, the CDOS will pay Contractor all funds necessary for placing the media buy so long as the CDOS has approved the media buy costs in advance."
- E. In Exhibit A, Milestone 4: Media Implementation and Reporting, the last two paragraphs are deleted and replaced with the following text:
"Within two business days after CDOS approval to commence Milestone 3 and receipt of contractor invoice, Contractor shall invoice up to \$103,500.00 in accordance with the Payment and Fee Scheduled below. The actual amount of the payment shall be the Contractor's nine percent commission on gross media spend on approved media placements less the amount paid to the Contractor for this purpose as specified in Milestone #1.
Upon successful completion of all Contract Milestones and Deliverables, as determined by CDOS, Contractor shall invoice up to \$103,500.00 in accordance with the Payment and Fee Scheduled below. The actual amount of the payment shall be the Contractor's nine percent commission on gross media spend on approved media placements less the amount paid to the Contractor for this purpose as specified in Milestones #1 & #3."

- F. In Exhibit A, Invoicing, the Payment and Fee Schedule Table is deleted in its entirety and replaced with the table below.

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Milestone 1: Broadcast, Cable, and Digital Media Planning</p> <p>Deliverable #1 – A framework of the broadcast and cable media to be purchased broken down by week and market</p> <ol style="list-style-type: none"> The Contractor will provide a media plan with a weekly breakdown of General Ratings Points (GRPs) to be purchased on broadcast stations in Colorado’s Designated Market Areas (DMAs) of Denver, Colorado Springs and Grand Junction. The Contractor will provide a media plan with a weekly breakdown of General Ratings Points (GRPs) to be purchased on cable stations in Colorado including Denver, Colorado Springs, Grand Junction, Durango and Cortez. <p>Deliverable #2 – A framework for digital audience targeting and media spend on a weekly basis broken down by channel and message</p> <ol style="list-style-type: none"> The Contractor will coordinate with CDOS to identify target audiences by digital channel (social media, digital pre-roll) and message (voter registration, voter education) using the Contractor’s national 	<p>Upon execution of the contract and receipt of Contractor invoice</p>	<p>Not to Exceed \$81,000.00</p>	<p>50% of 9% commission on estimated gross media spend</p>
	<p>Upon execution of Amendment #1 and receipt of Contractor invoice</p>	<p>Not to exceed \$22,500.00</p>	

Amendment Contract Number:

CMS#: 163906

CORE#: CT, VAAA, 2021-2543,v2

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>voter file.</p> <p>2. The Contractor will provide a media plan breaking down estimated audience size and media spend on a weekly basis by digital channel and message.</p>			
<p>Milestone 2: Broadcast and Cable Media Buying</p> <p>Deliverable #3 – Record of all Media Placement Purchases</p> <p>1. Contractor must provide CDOS with complete records on all media placement.</p> <p>2. Determine the file format required for the media content for each broadcast/cable station and digital platform in a manner acceptable to CDOS. Inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format.</p>	<p>Within two business days after CDOS approval of Deliverables #1 and #2 and receipt of contractor invoice.</p>	<p>Not to Exceed \$2,093,000.00</p>	

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Milestone 3: Purchases for Digital Audience Targeting</p> <p>Deliverable #4 Record of All Digital Audience Targeting Purchases</p> <ol style="list-style-type: none"> 1. Contractor must provide CDOS with complete records on all digital targeting purchases. Email of deliverable is sufficient. 2. Contractor must determine the file format required for the media content for each digital platform and must be in a format acceptable to CDOS. Contract must inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format. 	<p>Within two business days after CDOS approval to commence Milestone 3 and receipt of contractor invoice.</p>	<p>Not to Exceed \$103,500.00</p>	<p>To be calculated such that the Payment for Milestone #1 and this payment for Milestone #3 total 100% of 9% commission of gross media spend.</p>
<p>Milestone 4: Media Implementation and Reporting</p> <p>Deliverable #5: Confirmation of broadcast and cable advertising implementation</p> <ol style="list-style-type: none"> 1. Contractor must provide CDOS with e-mail confirming broadcast and cable advertising running as scheduled 			

Payment and Fee Schedule			
Milestones and Deliverables	Invoice Payment Deadline	Invoice Amount	Notes
<p>Deliverable #6: Reporting on digital advertising performance</p> <p>1. The Contractor must provide identified CDOS personnel with access to an analytics dashboard showcasing data surrounding digital advertising performance broken down by digital media platform that includes daily and cumulative total impressions, daily and cumulative clicks, and daily email and cumulative total amount spent and while campaign is live</p>			
Maximum Amount Payable to Contractor		\$2,300,000.00	

6. LIMITS OF EFFECT AND ORDER OF PRECEDENCE

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments or other modifications to the Contract, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Contract, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract or any prior modification to the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Contract to the extent that this Amendment specifically modifies those Special Provisions.

----- Forwarded message -----

From: **CORA User** <CORA@coloradosos.gov>

Date: Mon, Aug 29, 2022 at 11:10 AM

Subject: RE: [EXTERNAL] CORA - Media Plan

Good morning:

We have no documents responsive to this request.

Thank you.

Sent: Friday, August 26, 2022 10:34 AM

To: CORA User <CORA@ColoradoSOS.gov>

Subject: Re: [EXTERNAL] CORA - Media Plan

Please provide the reason for the extenuating circumstances.

Thank you.

On Thu, Aug 25, 2022 at 1:15 PM CORA User <CORA@coloradosos.gov> wrote:

Good afternoon,

We are compiling the documents for your request; however, we need to take the extension allowed in section 24-72-203 of the Colorado Revised Statutes. We will respond on or before 9/5/22.

Thank you.

Sent: Tuesday, August 23, 2022 2:02 PM

To: CORA User <CORA@ColoradoSOS.gov>

Subject: Re: [EXTERNAL] CORA - Media Plan

In February 2022, I received the attached media buy contract and media buy contract amendment. These documents specify deliverables 1-6 which are records of media placement and advertising that were purchased under the contract terms. I am requesting copies of those deliverables #1-6 as specified in the Glover Park contract:

Deliverable #1 – A framework of the broadcast and cable media to be purchased broken down by week and market

1. The Contractor will provide a media plan with a weekly breakdown of General Ratings Points (GRPs) to be purchased on broadcast stations in Colorado's Designated Market Areas (DMAs) of Denver, Colorado Springs and Grand Junction.
2. The Contractor will provide a media plan with a weekly breakdown of General Ratings Points (GRPs) to be purchased on cable stations in Colorado including Denver, Colorado Springs, Grand Junction, Durango and Cortez.

Deliverable #2 – A framework for digital audience targeting and media spend on a weekly basis broken down by channel and message

1. The Contractor will coordinate with CDOS to identify target audiences by digital channel (social media, digital pre-roll) and message (voter registration, voter education) using the Contractor's national voter file.

The Contractor will provide a media plan breaking down estimated audience size and media spend on a weekly basis by digital channel and message.

Deliverable #3 – Record of all Media Placement Purchases

1. Contractor must provide CDOS with complete records on all media placement.
2. Determine the file format required for the media content for each broadcast/cable station and digital platform in a manner acceptable to CDOS. Inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format.

Deliverable #4 Record of All Digital Audience Targeting Purchases

1. Contractor must provide CDOS with complete records on all digital targeting purchases. Email of deliverable is sufficient.
2. Contractor must determine the file format required for the media content for each digital platform and must be in a format acceptable to CDOS. Contract must inform CDOS in writing of the digital format requirements for each purchase. If this information is inaccurate, Contractor shall bear the expense of preparing and delivering the media content in the correct format.

Deliverable #5: Confirmation of broadcast and cable advertising implementation

1. Contractor must provide CDOS with e-mail confirming broadcast and cable advertising running as scheduled

Deliverable #6: Reporting on digital advertising performance

1. The Contractor must provide identified CDOS personnel with access to an analytics dashboard showcasing data surrounding digital advertising performance broken down by digital media platform that includes daily and cumulative total impressions, daily and cumulative clicks, and daily email and cumulative total amount spent and while campaign is live.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

