

EXHIBIT A TO RESOLUTION 2024-027

STATE OF COLORADO CONTRACT
COVER PAGE

State Agency Clean Fleet Enterprise (“CFE”) an enterprise for the purposes of Section 20 of Article X of the Constitution Colorado Department of Public Health and Environment (CDPHE) 4300 Cherry Creek Drive South Denver, Colorado 80246	Contractor City of Fort Collins 300 LaPorte Avenue Fort Collins Colorado 80522
Original Contract Number 2024*3395	Contract Performance Beginning Date The later of the Effective date or February 15, 2024
Contract Maximum Amount Initial Term 02/15/2024-02/14/2029 \$ 910,000.00 Contract Maximum Amount \$910,000.00	Contract Expiration Date February 14, 2029 Except as stated in §2.D., the total duration of this Contract, including the exercise of any options to extend, shall not exceed Five (5) years from its Performance Beginning Date.
Pricing/Funding Price Structure: Cost Reimbursement Contractor Shall Invoice: Monthly Funding Source: State \$910,000.00	Miscellaneous Authority to enter into this Contract exists in: CRS § 25-7-103.5 The Clean Fleet Enterprise (“CFE”) is and operates as a government-owned business within the Department of Public Health and Environment (“the department”) for the business purpose of incentivizing and supporting the use of electric motor vehicles and other clean fleet technologies by owners and operators of motor vehicle fleets. See § 25-7-103.5(4), C.R.S. The enterprise is overseen by the CFE Board of Directors. The department administers the program on behalf of the enterprise. Procurement Method: Request for Application (RFA) Solicitation Number (if any): RFA# 41343 CFVT
State Representative Celeste Kopperl Board Administrator Clean Fleet Enterprise Colorado Department of Public Health and Environment 4300 Cherry Creek Drive South Denver, CO 80246 Email: cdphe_cleanfleetenterprise@state.co.us	Contractor Representative Tracy Ochsner Director Operation Services City of Fort Collins 300 LaPorte Avenue Fort Collins Colorado 80522 tochsner@fcgov.com
Exhibits The following Exhibits and Attachments are attached and incorporated into this Contract: Exhibit A, Additional Provisions Exhibit B, Statement of Work Exhibit C, Budget	
Contract Purpose This environmental project serves to incentivize the use of Enterprise Approved Fleet Vehicles by businesses and governmental entities that operate fleets. This includes motor vehicles that were originally powered by internal combustion engines but have been converted into battery electric or hydrogen fuel cell electric motor vehicles and compressed natural gas motor vehicles that are fueled by recovered methane.	

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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p style="text-align: center;">CONTRACTOR City of Fort Collins</p> <hr/> <p style="text-align: center;">By: Signature</p> <p>Tracy ochsner</p> <hr/> <p style="text-align: center;">Name of Person Signing for Contractor</p> <hr/> <p style="text-align: center;">Title of Person Signing for Contractor</p> <hr/> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Clean Fleet Enterprise Will Allison, Chairperson CFE Board of Directors</p> <hr/> <p style="text-align: center;">By: Will Allison, Chairperson CFE Board of Directors</p> <p style="text-align: center;">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

By: Signature

Name of State Controller Delegate

Contract Effective Date: _____

-- Signature and Cover Pages End --

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1. PARTIES

This Contract is entered into by and between Contractor named on the Signature and Cover Page for this Contract (the “Contractor”), and the STATE OF COLORADO acting by and through the Clean Fleet Enterprise, a government owned business within the Department of Public Health and Environment (the “State” or “CFE” or “CDPHE”). The 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. Initial Term

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

C. Extension Terms - State’s Option

The State, at its discretion, shall have the option to extend the performance under this Contract beyond the Initial Term for a period, or for successive periods, at the same rates and under the same terms specified in the Contract (each such period an “Extension Term”). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to that in §20 “Sample Option Letter.” The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract. Except as stated in §2.D, the total duration of this Contract, including the exercise of any options to extend, shall not exceed 5 years from its Performance Beginning Date, or the number of years specified on the Signature and Cover Pages if such number is less than five (5) years absent prior approval from the CFE Board of Directors.

D. End of Term Extension

If this Contract approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in §15, may unilaterally extend such Initial Term or Extension Term for a period not to exceed 2 months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Contract in effect when such notice is given shall remain in effect during the End of Term Extension. The

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End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

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 §15. 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 §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. Additionally, if this Contract is less than 60% completed, as determined by the State, the State may reimburse Contractor for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations, provided that 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.

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- B. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- C. **“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. For purposes of clarification and the removal of any doubt, subject to any future modifications thereto, the Signature and Cover Pages and Sections 1 through 21, as identified in the Table of Contents herein above, shall constitute the “main body” of this Contract exclusively.
- D. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract.
- E. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- F. **“End of Term Extension”** means the time period defined in §2.D.
- G. **“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 and Cover Page for this Contract.
- H. **“Exhibits”** means the exhibits listed on the Signature and Cover Pages and attached to this Contract.
- I. **“Extension Term”** means the time period defined in §2.C.
- J. **“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.
- K. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- L. **“Initial Term”** means the time period defined in §2.B.
- M. **“Offeror”** means any entity or individual submitting a proposal or application in response to this solicitation.
- N. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- O. **“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.
- P. **“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,

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financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.

- Q. **“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.
- R. **“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.
- S. **“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.
- T. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- U. **“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.
- V. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.
- 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 delivery of the Goods and performance of the Services described in 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

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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

A. Completion of Work

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of the Exhibits. 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.

B. Option to Initiate Phase

The State, at its discretion, shall have the option to direct Contractor to begin performance of any of the contract phases described in the Exhibits. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §20 "Sample Option Letter." The Contractor shall begin work on each phase as of the effective date of the notice requiring Contractor to complete that phase, or a later date if one is contained in the notice, and shall complete all Work described for that phase 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 term shown on the Signature and Cover Pages for this Contract.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Contractor in the amounts listed in and in accordance with the Exhibits.
- b. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. 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

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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 the 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 CFE funds (which are not subject to state fiscal year appropriations), or 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

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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.

v. Option to Increase Maximum Amount

If the Signature and Cover Pages for this Contract show that the State has the Option to Increase or Decrease Maximum Amount, then the State, at its discretion, shall have the option to increase or decrease the statewide quantity of Goods and Services based upon the rates established in this Contract, and increase the maximum amount payable accordingly. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §20 “Sample Option Letter.” Delivery of Goods and performance of Services shall continue at the same rates and terms as described in this Contract. The State may include and incorporate a revised budget with the option letter, as long as the revised budget does not unilaterally change rates or terms specified in the Contract.

vi. Option to Increase Rates

In the event the rates shown in the Exhibits are determined by a third party, the State, at its discretion, shall have the option to increase or decrease the rates shown in the Exhibits as the State determines is necessary to account for increases or decreases in the rates. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to §20 “Sample Option Letter,” and any new rates table or exhibit shall be effective as of the effective date of that notice unless the notice provides for a different date.

6. REPORTING - NOTIFICATION

A. 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, within 5 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 in on the Signature and Cover Page.

B. 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 15, 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 §6.B shall constitute a breach of this

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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 3 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 2 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.

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 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

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Security and all applicable laws, rules, policies, publications, and guidelines. 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 nondisclosure agreements at least as protective as this Contract, and that the nondisclosure agreements 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 agreements to the State upon request.

C. Use, Security, and Retention

Contractor shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations 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, 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, Contractor shall be responsible for the cost of notifying each person who may have been impacted by

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the Incident. 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 and at Contractor's sole expense, 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

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.

D. Contractor shall maintain a written conflict of interest policy. Contractor shall provide the written conflict of interest policy to the State upon request.

10. INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor 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 by the State.

A. Workers' Compensation

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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 written covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate; and
- iii. \$1,000,000 products and completed operations aggregate

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. 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 and Subcontractors.

E. Primacy of Coverage

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

F. 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 §15 within 7 days of Contractor's receipt of such notice.

G. Subrogation Waiver

All insurance policies secured or maintained by Contractor or 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.

H. 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

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Subcontractor maintains 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.

I. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract by the effective date of the contract. 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 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §10.

11. BREACH

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 the 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 §12.A. 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 canceled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the

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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 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. The State may withhold any amount that may be due Contractor as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

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

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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. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State, (a) secure that right to use such Work for the State or Contractor; (b) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (c) 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 §14, shall have all remedies available at law and equity.

13. STATE'S RIGHT OF REMOVAL

The State retains the right to demand, at any time, regardless of whether Contractor is in breach, the immediate removal of any of Contractor's employees, agents, or subcontractors from the work whom the State, in its sole discretion, 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.

14. 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 §14.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 CDPHE 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.

15. NOTICES AND REPRESENTATIVES

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Each individual identified on the Signature and Cover Pages 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 on the Signature and Cover Pages for this Contract or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Signature and Cover Pages 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 below. Either Party may change its principal representative or principal representative contact information 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.

16. 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. 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. The Parties intend the Work Product to be works 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. The State may assign and license its rights under this license.

ii. Patents

In addition, Contractor grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell,

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offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Contractor that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

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. 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.

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.

17. 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

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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.

18. 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

Unless other restrictions are required elsewhere in this Contract, Contractor shall not enter into any subcontract in connection with its obligations under this Contract without providing notice to the State. The State may reject any such subcontract, and Contractor shall terminate any subcontract that is rejected by the State and shall not allow any Subcontractor to perform any Work after that Subcontractor's subcontract has been rejected by 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, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **§18.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

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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 promulgated 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. Order of Precedence

In the event of a conflict or inconsistency between this Contract and any Exhibits or attachments such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions in **§19** of the main body of this Contract.
- ii. The provisions of the other sections of the main body of this Contract.
- iii. Any other Exhibit(s) shall take precedence in alphabetical order.

L. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on

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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.

M. 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 the Contract.

N. Survival of Certain Contract Terms

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

O. 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 Colorado 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.

P. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §18.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 the Contract, and do not create any rights for such third parties.

Q. 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,

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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.

R. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required under §24-103.5-101 C.R.S., if any, are subject to public release through the CORA.

S. 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.

T. 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.

U. Indemnification

i. Applicability

This entire §18.U does not apply to Contractor if Contractor is a "public entity" within the meaning of the GIA.

ii. General Indemnification

Contractor shall indemnify, 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 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.

iii. 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, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including 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 §10.

iv. Intellectual Property Indemnification

Contractor shall indemnify, 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

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in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

v. **Accessibility Indemnification**

Contractor shall indemnify, save, and hold harmless the state, its employees, agents and assignees (collectively, the “Indemnified Parties”), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys’ fees and related costs) incurred by any of the Indemnified Parties in relation to Contractor’s failure to comply with §§24-85-101, et seq., C.R.S., or the Accessibility Standards for Individuals with a Disability as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

V. **Accessibility**

- i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by the Governor’s Office Of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Contractor’s compliance to the State’s Accessibility Standards to be determined by a third party selected by the State to attest to Contractor’s Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by the Office of Information Technology pursuant to Section §24-85-103 (2.5), C.R.S.

19. 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

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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

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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.

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20. SAMPLE OPTION LETTER

State Agency : Clean Fleet Enterprise (CFE) Colorado Department Of Public Health and Environment Air Pollution Control Division 4300 Cherry Creek Dr South Denver, CO 80246	Original Contract Number: Click here to enter text
Contractor (Name and Address) Click here to enter text	Option Letter Contract Number: Click here to enter text
Contract Performance Beginning Date : Click here to enter text	Current Contract Expiration Date: Click here to enter text
CONTRACT MAXIMUM AMOUNT TABLE	

Document Type	Contract Number	CAQE Funding Amount	State Funding Amount	Other Funding Amount	Term (dates)	Total
Current Contract Maximum Cumulative Amount						

1. **OPTIONS**

1. Option to extend for an Extension Term
2. Option to change quantity of goods under the Contract
3. Option to change quantity of services under the Contract
4. Option to change Contract rates
5. Option to initiate next phase of Contract

2. **REQUIRED PROVISIONS:**

1. In accordance with Section(s) Click here to enter text of the Original Contract referenced above the State hereby exercises its option for an additional term, beginning Click here to enter text and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
2. In accordance with Section(s) Click here to enter text. of the Original Contract referenced above, the State hereby exercises its option to Click here to enter text the quantity of Click here to enter text at the rates stated in the Original Contract as amended for the following reason: Click here to enter text
3. In accordance with Section(s) Click here to enter text of the Original Contract referenced above the State hereby exercises its option to modify the Contract rates specified in Click here to enter text for the following reason: Click here to enter text. The Contract rates attached to this Option Letter replace the rates in the Original Contract as of the Option Effective Date of this Option Letter.
4. In accordance with Section(s) Click here to enter text of the Original Contract referenced above, the State hereby exercise its option to initiate Phase Click here to enter text, which shall begin on Click here to enter text and end on Click here to enter text at the cost/price specified in Section Click here to enter text .

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- 5. The Contract Maximum Amount table is deleted and replace with the Current Contract Maximum Amount Maximum Amount table shown above

3. OPTION EFFECTIVE DATE:

- 1. The effective date of this Option Letter is upon approval of the State Controller or **Click here to enter text** whichever is later.

<p>STATE OF COLORADO Jared S. Polis, Governor Clean Fleet Enterprise CFE Board of Directors</p> <hr/> <p>By: Signature</p> <hr/> <p>CFE Board of Director Name</p> <hr/> <p>CFE Board of Director Title</p> <p>Date: _____</p>	<p>In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <hr/> <p>By: Signature</p> <hr/> <p>Name of State Controller Delegate</p> <hr/> <p>Option Effective Date: _____</p>
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ADDITIONAL PROVISIONS
To Original Contract Routing Number **2024*3395**

These provisions are to be read and interpreted in conjunction with the provisions of the Contract specified above.

1. CDPHE will distribute funding as a cost-reimbursement only via invoices submitted by the Contractor.
 - a. Project expenses will be reimbursed monthly for approved expenses incurred during the prior month.
 - b. Allowable expenses will be reimbursed monthly upon receipt and approval of a submitted invoice.
 - c. Invoice submissions are required within forty-five (45) days after month-end.
 - i. Source documentation demonstrating actual expenses incurred will be subjected to review.
 - ii. All expenditures must be reasonable, necessary, and approved by CDPHE for the completion of approved grant activities, and must comply with the State of Colorado fiscal rules.
 - iii. CDPHE will not reimburse any costs incurred by selected applicants prior to the issuance of a legally executed Contract.
2. To receive compensation under the Contract, the Contractor shall submit a signed CDPHE Standardized Invoice Form. This form is accessible from the CDPHE internet website <https://www.colorado.gov/pacific/cdphe/standardized-invoice-form-and-links> and is incorporated and made part of this Contract by reference. CDPHE will provide technical assistance in accessing and completing the form. The CDPHE Reimbursement Invoice Form and Expenditure Details page must be submitted no later than **forty-five (45)** calendar days after the end of the billing period for which services were rendered. Expenditures shall be in accordance with the Statement of Work and Budget. The Contractor shall submit the invoice using the method listed below:

1. Scan the completed and signed CDPHE Reimbursement Invoice Form
2. The Contractor shall submit receipts for every separate invoice request.
3. Email the scanned invoice and Expenditure Details page and (supporting documentation) to:

APCD Fiscal Staff at cdphe_apcd_fiscal@state.co.us

The Contractor, when the project involves subcontracted elements, shall submit the CDPHE Standardized Invoice Form using the method listed below:

1. Scan the completed and signed CDPHE Standardized Invoice Form
2. The Contractor shall include the subcontractor's invoice as an attachment.
3. Email the scanned invoice and Expenditure Details page to:

APCD Fiscal Staff at cdphe_apcd_fiscal@state.co.us

Final billings under the Contract must be received by the State within a reasonable time after the expiration or termination of the Contract; but in any event no later than **forty-five (45)** calendar days from the effective expiration or termination date of the Contract.

The State of Colorado will only reimburse reasonable, necessary, and approved actual costs incurred on this project.

3. Time Limit For Acceptance Of Deliverables.
 - a. Evaluation Period. The State shall have **thirty (30)** calendar days from the date a deliverable is delivered to the State by the Contractor to evaluate that deliverable, except for those deliverables that have a different time negotiated by the State and the Contractor.

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- b. Notice of Defect. If the State believes in good faith that a deliverable fails to meet the design specifications for that particular deliverable, or is otherwise deficient, then the State shall notify the Contractor of the failure or deficiencies, in writing, within **thirty (30)** calendar days of: 1) the date the deliverable is delivered to the State by the Contractor if the State is aware of the failure or deficiency at the time of delivery; or 2) the date the State becomes aware of the failure or deficiency. The above time frame shall apply to all deliverables except for those deliverables that have a different time negotiated by the State and the Contractor in writing pursuant to the State's fiscal rules.
 - c. Time to Correct Defect. Upon receipt of timely written notice of an objection to a completed deliverable, the Contractor shall have a reasonable period of time, not to exceed **thirty (30)** calendar days, to correct the noted deficiencies.
4. Health Insurance Portability and Accountability Act (HIPAA) Business Associate Determination.

The State has determined that this Contract does not constitute a Business Associate relationship under HIPAA.

STATEMENT OF WORK
To Original Contract Number **2024*3395**

These provisions are to be read and interpreted in conjunction with the provisions of the Contract specified above.

I. Entity Name: City of Fort Collins

II. Project Description:

This project serves to achieve maximum air quality benefits for the people of Colorado by transitioning fossil fuel vehicles to Enterprise Approved Fleet Vehicles. Colorado Department of Public Health and Environment (CDPHE) distributes funding through the Clean Fleet Enterprise's (CFE) Clean Fleet Vehicle and Technology grant program. Colorado Senate Bill 21-260 (Sustainability of the Transportation System) created the Clean Fleet Enterprise within the CDPHE for the business purpose of incentivizing and supporting the use of light, medium, and heavy-duty electric motor vehicles and other clean fleet technologies by owners and operators of motor vehicle fleets. CDPHE manages the disbursement of funds for this project.

III. Definitions:

1. **APCD:** Air Pollution Control Division
2. **CFE:** Clean Fleet Enterprise
3. **CFVT:** Clean Fleet Vehicle & Technology Grant Program
4. **Contractor:** the awarded CFVT entity and any subsidiaries
5. **Enterprise Approved Fleet Vehicle:** vehicles outlined in the CFVT Program Guide to include: light, medium and heavy duty vehicles used for business purposes..
6. **Enterprise Approved Fleet Vehicle Fuel Type:**
 - a. **BEV:** Battery Electric Vehicle
 - b. **PHEV:** Plug-in Hybrid Electric Vehicle
 - c. **CNG:** Compressed Natural Gas Vehicle-fueled with 90% recovered methane
 - d. **FCEV:** Fuel Cell Electric Vehicle
7. **Vehicle Depreciation Document:** Document outlining a depreciation schedule for vehicles that are sold, relocated outside of Colorado, or become permanently inoperable prior to conclusion of this contract.
8. **Vehicle Scrappage:** Fossil-fueled vehicles which are rendered permanently inoperable by means of crushing and destroying engine, transmission and chassis components.
9. **Predetermined Fossil-fueled Vehicles:** Fossil-fueled vehicles selected for permanent removal from the fleet by means of vehicle scrappage.
10. **Proof of Order:** Documentation in the form of a sales receipt, or similar, that the Enterprise Approved Fleet Vehicle has been ordered by the Contractor.
11. **Proof of Purchase:** Documentation in the form of a sales receipt, or similar, that the Enterprise Approved Fleet Vehicle has been paid for by the Contractor.
12. **Vehicle Operational Data:** Including monthly miles traveled, fuel consumption (in kWh or similar), primary charging or fueling location, fuel economy (MPG or MPGe), vehicle vocation, basic route information, and percentage of recovered methane used in fueling (when applicable).
13. **Vehicle Information:** Including Vehicle Identification Number (VIN), license plate number, proof of approved State of Colorado registration and proof of insurance.

IV. Work Plan:

Goal #1: To improve and protect the air quality in Colorado through incentivizing, supporting, and accelerating the adoption of Enterprise Approved Fleet Vehicle(s) and other clean fleet technologies by owners and operators of motor vehicle fleets as authorized by the Clean Fleet Enterprise created pursuant to § 25-7.5-103, C.R.S.

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Objective #1: No later than the expiration date of the Contract, acquire Enterprise Approved Fleet Vehicle.	
Primary Activity #1	The Contractor shall acquire Enterprise Approved Fleet Vehicle(s) for routine usage in daily business operations.
Sub-Activities #1	<ol style="list-style-type: none"> 1. The Contractor shall provide CDPHE with proof that each Enterprise Approved Fleet Vehicle order has been placed. 2. The Contractor shall, upon the vehicle delivery, provide CDPHE with proof of payment for an Enterprise Approved Fleet Vehicle Fuel Types.
Primary Activity #2	The Contractor shall, when applicable, dispose of predetermined fossil-fueled vehicles utilizing the Vehicle Scrappage Requirements document.
Sub-Activities #2	<ol style="list-style-type: none"> 1. The Contractor shall, when applicable, provide Vehicle Scrappage reimbursement requests separate from Enterprise Approved Fleet Vehicles. 2. The Contractor shall use the Vehicle Scrappage Checklist, provided in the Vehicle Scrappage Requirements document, when submitting a Vehicle Scrappage reimbursement request.
Primary Activity #3	The Contractor shall collect information for each awarded Enterprise Approved Fleet Vehicle for the semi-annual Vehicle Operational Data report.
Sub-Activities #3	<ol style="list-style-type: none"> 1. The Contractor shall provide Vehicle Operational Data for each awarded Enterprise Approved Fleet Vehicle no later than April 30th and October 31st of each calendar year after being put into regular fleet operation. 2. The Contractor shall complete a Vehicle Operational Data Form to include each Enterprise Approved Fleet Vehicle awarded.
Standards and Requirements	<ol style="list-style-type: none"> 1. The content of electronic documents located on CDPHE and non-CDPHE websites and information contained on CDPHE and non-CDPHE websites may be updated periodically during the Contract term. The Contractor shall monitor documents and website content for updates and comply with all updates. 2. The Contractor shall comply with the requirements of the Clean Fleet Vehicle & Technology Grant Program as governed by Senate Bill 21-260 Sustainability of the Transportation System. This information is incorporated and made part of this Contract by reference and is available on the following website: https://leg.colorado.gov/bills/sb21-260 and as set forth in statute at § 24-38.5-302, <i>et seq.</i>, C.R.S., § 25-7.5-101, <i>et seq.</i>, C.R.S. 3. The Contractor shall comply with Registration Requirements for each awarded Enterprise Approved Fleet Vehicle. This information is located on the State of Colorado Department of Revenue Division of Motor Vehicles website https://dmv.colorado.gov/registration-requirements and is incorporated and made part of this contract by reference. 4. The Contractor shall comply with the requirements of the Vehicle Scrappage Requirements document for the disposal of each predetermined fossil-fueled vehicle. This information is

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	<p>incorporated and made part of this contract by reference and]is available on the following website: https://cdphe.colorado.gov/clean-fleet-vehicle-technology-grant-program</p> <p>5. The Contractor shall comply with the requirement to provide a semi-annual Vehicle Operational Data Form to include each Enterprise Approved Fleet Vehicle awarded. This document is incorporated and made part of this contract by reference and is available on the following website: https://cdphe.colorado.gov/clean-fleet-vehicle-technology-grant-program</p> <p>6. The Contractor shall provide CDPHE with Proof of Order documentation for each awarded Enterprise Approved Fleet Vehicle that may include, where appropriate:</p> <ol style="list-style-type: none"> a. Dealer documentation of order placed b. Manufacturer documentation of order placed. c. Documentation as approved by Enterprise staff. <p>7. The Contractor shall provide CDPHE Proof of Purchase for each awarded Enterprise Approved Fleet Vehicle acquired to include:</p> <ol style="list-style-type: none"> a. VIN number b. Proof of Colorado approved registration c. JPEG formatted photos of each awarded Enterprise Approved Fleet Vehicle to include: <ol style="list-style-type: none"> i. Front of vehicle(s) ii. Side of vehicle(s) iii. Rear of vehicle(s) <p>8. The Contractor shall guarantee that Leasing Agreement includes the following, at a minimum, for any leased Enterprise Approved Fleet Vehicle:</p> <ol style="list-style-type: none"> a. language regarding ownership b. maintenance provisions c. State funds to be payments towards principal <p>9. The Contractor shall provide Lease Agreement documents for review prior to the Lease Agreement being executed.</p> <p>10. CDPHE will review Lease Agreements provided by the Contractor within 20 business days to:</p> <ol style="list-style-type: none"> a. Ask clarifying questions b. Provide feedback. <p>11. The Contractor shall retain ownership of the Enterprise Approved Fleet Vehicle upon delivery.</p> <p>12. The Contractor shall maintain any Lease Agreement for the duration of this contract.</p> <p>13. The Contractor shall provide routine maintenance for each awarded Enterprise Approved Fleet Vehicle in accordance with the manufacturer's specification(s).</p> <p>14. The Contractor shall incur repair/replacement costs for each awarded Enterprise Approved Fleet Vehicle or up-fitting equipment damaged by the Contractor, agents or subcontractors.</p>	
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	<p>15. The Contractor shall address any vehicle deficiencies under the manufacturer's warranty for each awarded Enterprise Approved Fleet Vehicle.</p> <p>16. The Contractor shall utilize each awarded Enterprise Approved Fleet Vehicle for the duration of this contract.</p> <p>17. The Contractor shall notify the CDPHE immediately of any awarded Enterprise Approved Fleet Vehicle(s) that becomes permanently inoperable prior to the expiration date of the contract.</p> <p>18. The Contractor shall comply with the Vehicle Depreciation Document regarding the reimbursement schedule of the total funds provided by the State for each Enterprise Approved Fleet Vehicle that becomes permanently inoperable prior to the conclusion of the contract. This document is incorporated and made part of this contract by reference and is available on the following website: https://cdphe.colorado.gov/clean-fleet-vehicle-technology-grant-program</p> <p>19. The Contractor shall notify the CDPHE immediately of any intent to sell any awarded Enterprise Approved Fleet Vehicle(s) prior to the expiration date of the contract.</p> <p>20. The Contractor shall comply with the Vehicle Depreciation Document regarding the reimbursement schedule of the total funds provided by the State for each Enterprise Approved Fleet Vehicle that is sold prior to the conclusion of the contract. This document is incorporated and made part of this contract by reference and is available on the following website: https://cdphe.colorado.gov/clean-fleet-vehicle-technology-grant-program</p> <p>21. The Contractor shall notify the CDPHE a minimum of six (6) months prior to any intent to permanently relocate any awarded Enterprise Approved Fleet Vehicle outside of the State of Colorado</p> <p>22. The Contractor shall comply with the Vehicle Depreciation Document regarding the reimbursement schedule of the total funds provided by the State for each Enterprise Approved Fleet Vehicle that is permanently relocated outside of the State of Colorado prior to the conclusion of the contract. This document is incorporated and made part of this contract by reference and is available on the following website: https://cdphe.colorado.gov/clean-fleet-vehicle-technology-grant-program</p> <p>23. CDPHE will adhere to contacting awardees to collect the Vehicle Operational Data Form for the duration of this Contract. Vehicle Operational Data Forms will be collected and reported no later than April 30th and October 31st of each calendar year for the duration of this contract.</p> <p>24. The Contractor shall provide Vehicle Operational Data operational reporting data for each awarded Enterprise Approved Fleet Vehicle placed into service for the duration of this contract.</p> <p>25. The Contractor shall provide a list of overnight locations for each awarded Enterprise Approved Fleet Vehicle to comply with insurance requirements.</p> <p>26. The Contractor shall maintain active vehicle insurance coverage on each awarded Enterprise Approved Fleet Vehicle in accordance</p>	
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	<p>with the State’s minimum requirements set forth in the main body of this Contract.</p> <p>27. The Contractor shall operate the Enterprise Approved Fleet Vehicle in the state of Colorado, limiting routes and trips for vehicle operation in neighboring states.</p> <p>28. The Contractor shall limit/prohibit the use of any Enterprise Approved Fleet Vehicle by a subcontractor without prior written approval from CDPHE.</p> <p>29. CDPHE will review Contractor requests to subcontract any awarded Enterprise Fleet Vehicle within 20 business days to:</p> <ul style="list-style-type: none"> a. Ask clarifying questions b. Provide feedback. <p>30. The Contractor shall, upon request, allow site visits to confirm awarded Enterprise Approved Fleet Vehicles are still in service to be conducted by:</p> <ul style="list-style-type: none"> a. CDPHE, and b. CFE. <p>31. CDPHE will, in coordination with CFE, provide a minimum of 10 business days’ notice when requesting a site visit with the Contractor.</p> <p>32. The Contractor shall submit all deliverables due under this contract electronically via email to the Mobile Sources Program Staff.</p>	
<p>Expected Results of Activity(s)</p>	<p>Decreased fossil-fuel emissions within Colorado.</p>	
<p>Measurement of Expected Results</p>	<p>Semi-annual Vehicle Operational Data for each awarded Enterprise Approved Fleet Vehicle(s).</p>	
<p>Deliverables</p>	<ol style="list-style-type: none"> 1. The Contractor shall submit Proof of Order for each Enterprise Approved Fleet Vehicle. 2. The Contractor shall submit Proof of Purchase for reimbursement of each awarded Enterprise Approved Fleet Vehicle. 3. The Contractor shall submit Vehicle Information for each approved vehicle acquisition. 4. The Contractor shall submit a Vehicle Scrapage Documentation <i>Checklist</i> for each predetermined fossil-fueled vehicle that has been scrapped. 5. The Contractor shall submit semi-annual Vehicle Operational Data Forms to CDPHE. 	<p>Completion Date</p> <p>No later than 120 calendar days after contract execution</p> <p>No later than 45 calendar days after receipt of the eligible vehicle.</p> <p>No later than 45 calendar days after receipt of the eligible vehicle.</p> <p>No later than 12 months after receipt of eligible vehicle.</p> <p>No later than April 30th and October 31st of each calendar year after the vehicle begins fleet service.</p>

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V. Monitoring:

CDPHE's monitoring of this Contract for compliance with performance requirements will be conducted throughout the contract period by the Mobile Sources Program Staff. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include review of semi-annual Vehicle Operation Data reports. The Contractor's performance will be evaluated at set intervals and communicated to the contractor.

VI. Resolution of Non-Compliance:

CDPHE's monitoring of this Contract for compliance with performance requirements will be conducted throughout the contract period by the Mobile Sources Program Staff. Methods used will include a review of documentation determined by CDPHE to be reflective of performance to include review of semi-annual Vehicle Operation Data reports. The Contractor's performance will be evaluated at set intervals and communicated to the contractor.

BUDGET

Line Item Description:	Amount the State will reimburse up to:
Enterprise Approved Fleet Vehicle(s)	\$910,000.00
N/A	\$0.00
TOTAL	\$910,000.00

This Contract shall not exceed **Nine Hundred Ten Thousand Dollars (\$910,000.00)**.