

RESOLUTION NO. _____-15

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR RENEWAL OF THE CDL THIRD PARTY TESTING UNIT LICENSE BETWEEN THE CITY OF COLORADO SPRINGS AND THE STATE OF COLORADO

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

Section 1. The City Council finds that renewing the CDL Third Party Testing Unit License is in the best interest of the City of Colorado Springs for the health, safety, and welfare of its residents.

Section 2. The Intergovernmental Agreement, dated _____, 2015, for the purpose of authorizing the City to administer and provide CDL testing on behalf of the State between the City of Colorado Springs and the State of Colorado, attached hereto as Exhibit A and made a part of this resolution ("Agreement"), is approved.

Section 3. The Mayor is authorized to execute and administer the Agreement for and on behalf of the City and the City Clerk is directed to attest the Mayor's signature and affix the seal of the City.

DATED at Colorado Springs, Colorado, this ____ day of October, 2015.

Merv Bennett, Council President

ATTEST:

Sarah B. Johnson, City Clerk

STATE OF COLORADO
Colorado Department of Revenue
Division of Motor Vehicles
Inter-Governmental CDL Driver Testing Agreement
with
City of Colorado Springs

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1. PARTIES

This Agreement (“Agreement”) is entered into by and between City of Colorado Springs (“Contractor”), and the STATE OF COLORADO acting by and through the Colorado Department of Revenue, Division of Motor Vehicles, Driver Testing and Education (“DOR”, “DMV” or “State”). Contractor and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by DOR (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Agreement exists in CRS §24-35-105. Authority to certify appropriate third parties to test and train applicants for licensing exists in CRS §42-2-111(1)(b). Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The State desires to authorize Contractor to administer and provide CDL testing on behalf of the State as provided in 1 CCR 204-30 Rule 7 as currently written or hereafter amended.

D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms shall have the meanings ascribed to them below. Capitalized terms used in this Agreement but not defined shall have the meanings ascribed to them in 1 CCR 204-30 as currently written or hereafter amended.

CDL Driving Skills Tester: A person licensed by the State under the provisions of CRS §42-2-407 to administer CDL Skills Test.

CDL Testing Unit or Testing Unit: Either a business, association, or governmental entity licensed by the State under the provisions of CRS §42-2-407 to administer CDL Skills Test.

Commercial Driver's License or CDL : A license issued to an individual in accordance with the requirements of the federal Commercial Motor Vehicle Safety Act of 1986 and State laws, rules and regulations, including CRS § 42-2-401 et seq., as currently written or hereafter amended. A card issued by the State which entitles the holder while having such document in his or her immediate possession, to drive a motor vehicle of certain classes and endorsements upon the highways without supervision.

Agreement: This base document and all exhibits, attachments, and amendments.

Goods: A tangible material acquired, produced, or delivered by Contractor either separately or in conjunction with the Services;

Party or Parties: "Party" means the State or Contractor and "Parties" means both the State and Contractor.

Renewal Term - The extension of the Initial Term pursuant to an Option Letter as provided in §5.C.

Services: The required services to be performed by Contractor pursuant to this Agreement.

Work: The tasks and activities Contractor is required to perform to fulfill its obligations under this Agreement, **Exhibit A**, and 1 CCR 204-30 Rule 7, as currently written or hereafter amended, including the performance of the Services and delivery of the Goods.

Work Product: The tangible or intangible results of Contractor's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement

Performance under this Agreement shall commence on the later of either the Effective Date or August 21, 2015. This Agreement shall terminate on August 20, 2018, unless sooner terminated or further extended as specified elsewhere herein.

Notwithstanding anything in this Agreement to the contrary, the license of a Testing Unit may be revoked, canceled or suspended in accordance with 1 CCR 204-30 Rule 7, including without limitation 7(O), as currently written or hereafter amended. The term of this Agreement is contingent upon the issuance and continuous maintenance of valid licensing of the Testing Unit to provide Services. Absent valid licensing, Contractor may not provide Services. Any loss of license shall be sufficient cause for immediate termination of this Agreement. Permanent loss of license shall immediately terminate this Agreement.

B. Two Month Extension

The State, at its sole discretion upon written notice to Contractor as provided in §17, may unilaterally extend the term of this Agreement for a period not to exceed two months if the Parties are negotiating a replacement term. The provisions of this Agreement in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two-month extension. The two month extension shall immediately terminate when and if a replacement Agreement is approved and signed by the DOR.

C. State's Option to Extend

The State, at its sole discretion, may extend the term of this Agreement for a period of two (2) additional one-year renewal periods on the same terms specified in this Agreement. If the State exercises this option, it shall provide written notice to Contractor at least thirty (30) days prior to the end of the current Contract term in form substantially equivalent to **Exhibit B**. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Agreement.

6. STATEMENT OF WORK

A. Completion

Contractor shall complete the Work and its other obligations as described herein and in **Exhibit A**, Statement of Work, at no cost to the State.

B. Goods and Services

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall be at the expense of the Contractor without compensation from or reimbursement by the State.

C. Employees

All persons employed by Contractor to perform Work under this Agreement shall be Contractor's employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Agreement.

D. Authorization

The State hereby authorizes Contractor to provide the Services described herein, in **Exhibit A**, and 1 CCR 204-30 Rule 7, as currently written or hereafter amended, in accordance with the terms and subject to the obligations set forth herein and therein. This Agreement incorporates by reference 1 CCR 204-30 Rule 7.

E. Subcontractors Not Permitted

The use of subcontractors in the performance of this Agreement is not allowed. Pursuant to CRS §42-2-407(1) CDL Driving Tests may be performed only by employees of DOR or by CDL Driving Skills Tester(s) employed by licensed CDL Testing Units.

F. Within the Boundaries of Colorado

Contractor must maintain required licensing in Colorado and certification required by DMV. All testing services provided by Contractor must be conducted within the boundaries of the State of Colorado.

7. NO COST AGREEMENT

The State shall have no financial obligations under this Agreement. Contractor shall be solely liable for the costs associated with the implementation or continued operation of this Agreement, including but not limited to post-audit costs, costs of computer hardware, software, services, personnel, networks, State audits, licenses, transportation, mileage, travel, insurance, bonds, or administration.

8. REPORTING – NOTIFICATION

Reports, evaluations, and reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State.

A. Performance, Progress, Personnel, and Funds

The State shall submit an annual audit report to Contractor, containing an evaluation and review of Contractor's performance and status of Contractor's obligations hereunder. Contractor shall comply with all reporting requirements, if any, set forth in **Exhibit A** and 1 CCR 204-30 Rule 7, as currently written or hereafter amended.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Agreement or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of Colorado Department of Revenue.

C. Performance Outside the State of Colorado and/or the United States

[Not applicable if Contract Funds include any federal funds] Following the Effective Date, Contractor shall provide written notice to the State, in accordance with §17 (Notices and Representatives), within 20 days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this §8.C shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Contractor to provide notice to the State under this §8.C shall constitute a material breach of this Agreement.

D. Noncompliance

Contractor's failure to provide reports and notify the State in a timely manner in accordance with this §8 constitutes a breach of this Agreement and may result in termination of this Agreement as provided under this Agreement.

9. CONTRACTOR RECORDS

A. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: (a) a period of three years after the date this Agreement expires or is sooner terminated, or (b) the resolution of any pending Agreement matters, or (c) if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

Contractor shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Agreement during the Record Retention Period for a period of three years following termination of this Agreement or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extensions or renewals. If the Work fails to conform to the requirements of this Agreement, the State may require Contractor promptly to bring the Work into conformity with Agreement requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Contractor to take necessary action to ensure that future performance conforms to Agreement requirements and exercise the remedies available under this Agreement, at law or in equity, in lieu of or in conjunction with such corrective measures.

C. Monitoring

Contractor shall permit the State, the Federal Government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

D. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Agreement, Contractor shall submit a signed copy of the final audit report to the State or its principal representative at the address specified herein.

E. Additional Recording and Auditing Requirements

The Contractor shall comply with the recording and auditing requirements described in 1 CCR 204-30 Rule 7, as currently written or hereafter amended, including, without limitation, Rule 7(M).

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Contractor shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any state records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to the Colorado Open Records Act, CRS §24-72-200.1 et seq.

A. Confidentiality

Contractor shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Contractor shall be immediately forwarded to the State's principal representative.

B. Notification

Contractor shall notify its agent, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before permitting them to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Contractor or its agents in anyway, except as authorized by this Agreement or approved in writing by the State. Contractor shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as permitted in this Agreement or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Contractor for any reason 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 State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to this §10.

11. REPRESENTATIONS AND WARRANTIES

Contractor makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

A. Standard and Manner of Performance

Contractor shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession and in the sequence and manner set forth in this Agreement. Without limitation, Contractor shall comply with all requirements of 1 CCR 204-30 Rule 7, as currently written or hereafter amended, and other applicable provisions and laws.

B. Legal Authority – Contractor Signatory

Contractor warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind Contractor to its terms. If requested by the State, Contractor shall provide the State with proof of Contractor's authority to enter into this Agreement within fifteen (15) days of receiving such request.

C. Licenses, Permits, Etc.

Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder, without reimbursement by the State. Additionally, all employees of Contractor performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Agreement is a material breach by Contractor and constitutes grounds for termination of this Agreement.

- i. The Contractor shall comply with the licensing requirements described in 1 CCR 204-30 Rule 7, as currently written or hereafter amended.

D. Application

The information, representations, and warranties set forth in the application for approval or renewal of certification submitted by Contractor to the State remain true and correct as of the Effective Date.

12. SURETY BONDS

This Agreement incorporates by reference Code of Federal Regulations, Title 49, Subtitle B, Chapter I, Subchapter C, parts 171 and 172, and Code of Federal Regulations, Title 49, Subtitle B, Chapter III in their current form and as they may be hereafter amended. As an agency of government or Colorado school district that will administer CDL driving tests outside of their unit, Contractor must maintain a bond in the amount of five thousand dollars (\$5,000). A surety company authorized to do business with the State must execute the bond. The coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State. Such bond must inure to the benefit of the State and shall be in force through the term of the Agreement, including any extensions. A certificate evidencing coverage must be delivered to the State prior to execution of the Agreement and prior to each subsequent renewal. The bond must be for the use and benefit of the State in the event of a monetary loss within the limitations of the bond, attributable to the willful, intentional, or negligent conduct of the Testing Unit or its agent(s) or employees(s). If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the testing unit cannot test outside their unit. The bond contract shall contain a provision that indicates that any modifications or cancellation of such bond can occur only sixty (60) days after written notice to the State. Failure of Contractor to maintain the required surety bond may result, in the State's sole discretion, in the immediate termination of this Agreement. The bond shall be for the use and benefit of the State in the event of a monetary loss within the limitations of the bond attributable to the willful, intentional, or negligent conduct of Contractor, or its agents or employees. The Contractor shall comply with the bond requirements described in 1 CCR 204-30 Rule 7, as currently written or hereafter amended, including, without limitation, Rule 7(N).

- A. The bond may be used to indemnify against loss or damage arising out of the Contractor's breach of any contract between the Contractor and a CDL candidate.
- B. If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the Contractor's certification shall be suspended. The suspension shall continue until satisfactory steps are taken to restore the original amount of the bond.
- C. The State shall be named as the beneficiary on the bond and the bond must be held in the name of the State.

13. INSURANCE

Contractor shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State.

A. Contractor - Public Entities

If Contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et.seq., as amended (the “GIA”), then Contractor shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Contractor shall show proof of such insurance satisfactory to the State, if requested by the State. Contractor shall require each contract with a Subcontractor that is a public entity, to include the insurance requirements necessary to meet such Subcontractor’s liabilities under the GIA.

ii. Non-Public Entities

If Contractor is not a “public entity” within the meaning of the GIA, Contractor shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §14.B with respect to Subcontractors that are not “public entities”.

B. Contractors – Subcontractors

Contractor shall require each contract with Subcontractors other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker’s Compensation

Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of Contractor’s employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

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

iii. 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.

iv. Additional Insured

The State shall be named as additional insured on all Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent) required of Contractor hereunder.

v. Primacy of Coverage

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

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least thirty (30) days prior notice to Contractor and Contractor shall forward such notice to the State in accordance with §17 (Notices and Representatives) within seven days of Contractor’s receipt of such notice.

vii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by Contractor as required herein 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.

C. Certificates

Contractor shall provide certificates showing insurance coverage or affidavits of self-insurance required hereunder to the State within seven (7) business days if the State so requests. No later than fifteen (15) days prior to the expiration date of any such coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during

the term of this Agreement, Contractor shall, within ten (10) days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §14.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder, in whole or in part or in a timely or satisfactory manner, constitutes a breach. 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 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the State to Contractor in the manner provided in §17 and the State may exercise any of the remedies set forth in §16 or 1 CCR 204-30 Rule 7, as currently written or hereafter amended. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

16. REMEDIES

If Contractor is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §16 in addition to all other remedies set forth in other sections of this Agreement following the notice set forth in §15.B. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively. Without limitation, the State's remedies include those described in this §16 as well as those remedies provided for in 1 CCR 204-30 Rule 7, as currently written or hereafter amended, including Rule 7(O).

A. Termination for Cause and/or Breach

The State may terminate this entire Agreement or any part of this Agreement. Exercise by the State of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder 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, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, Contractor shall assign to the State all of Contractor's right, title, and interest under 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 in which the State has an interest. All materials owned by the State in the possession of Contractor shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by Contractor to the State and shall become the State's property.

ii. 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 by virtue of any breach under this Agreement by Contractor. Contractor shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State

for cause or breach by Contractor, which shall be governed by §15 or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §17. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in §16.A.i.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State. Contractor shall promptly cease performance in accordance with the State's directive.

ii. Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Contractor's employees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or the State's best interest.

iii. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, Contractor shall, at the State's option (a) obtain for the State or Contractor the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

17. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. DMV:

State of Colorado/Department of Revenue
Driver's License
1881 Pierce Street, Room 128
Lakewood, CO 80214
Attn: Carol Olds
Phone: 303-205-8412
carol.olds@state.co.us

With a Copy To:

State of Colorado/Department of Revenue
EDO/PACS
Contract Services
1375 Sherman St, Room 429
Denver, CO 80203

B. Contractor:

City of Colorado Springs
30 S Nevada, STE 603
Colorado Springs, CO 80903

18. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Agreement shall be the exclusive property of the State and, all Work Product shall be delivered to the State by Contractor upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the State.

19. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act, CRS §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

20. GENERAL PROVISIONS

A. Assignment and Subcontracts

Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior, written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments, subcontracts, or Subcontractors approved by the State are subject to all of the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §20.A, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees pursuant to the terms of this Agreement; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the

Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Modification

i. By the Parties

Except as specifically provided to the contrary in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by the Parties in an amendment to this Agreement, signed and approved in accordance with applicable Colorado State law.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

I. Order of Precedence

The provisions of this Agreement shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, including, but not limited to, those provided by Contractor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The provisions of the main body of this Agreement,
- iii. Exhibit A.

J. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

K. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Contractor fails to perform or comply as required.

L. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services are rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Contractor shall be solely liable for paying such taxes as the State is prohibited from paying or reimbursing Contractor for such taxes.

M. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Except as provided to the contrary in §18, any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

N. Waiver

Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

O. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et. seq.

P. Gifts / Gratuities

- i. The Contractor shall not, by itself or through any officer, director, employee, agent, partner, subcontractor or other representative, offer, give, grant, or otherwise deliver any gift, gratuity, or anything of monetary or non-monetary value to any employee of the State or to any member of his/her immediate family or anyone living in his/her household. Failure by Contractor to ensure compliance with this provision may result, in the State's sole discretion, in immediate termination of the Agreement or other remedies available in the Agreement.
- ii. Contractor shall not, by itself or through any officer, director, employee, agent, partner, subcontractor or other representative, receive or accept any gift, gratuity, or anything of monetary or non-monetary value from any recipient of Contractor's services related to the performance of its contractual duties or from any member of such client's immediate family or anyone living in his/her household. Failure by Contractor to ensure compliance with this provision may result, in the State's sole discretion, in immediate termination of the Contract or other remedies available in the Agreement.

Q. Non-Exclusive Rights

It is understood and agreed by the Contractor that the State does not grant the Contractor exclusive rights to provide services under this Agreement. The State reserves the right to contract with and authorize the provision of equivalent services from persons and entities other than the Contractor, as may be in the best interest of the State. This Agreement shall remain in full force and effect should the State enter into other contracts for the same or similar goods and services as provided under this Agreement.

R. Press Contacts/News Releases

Contractor shall not initiate any press and/or media contact nor respond to press/media requests regarding this Agreement and/or any related matters concerning the State without the prior written approval of the State.

S. Cooperation of the Parties

Contractor and the State agree to cooperate fully, to work in good faith, and to mutually assist each other in the performance of this Agreement. In connection herewith, the Parties shall meet to resolve problems associated with this Agreement. Neither party will unreasonably withhold its approval of any act or request of the other to which the party's approval is necessary or desirable.

21. COLORADO SPECIAL PROVISIONS

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

A. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

[State Controller's Designee has reviewed and determined that this is a no-cost contract and does not require further State Controller approval unless modifications are made within this document.] This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee.

B. FUND AVAILABILITY. CRS §24-30-202(5.5).

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

C. GOVERNMENTAL IMMUNITY

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

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 and its employees and agents are not entitled to unemployment insurance or

workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW

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

F. CHOICE OF LAW

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

G. BINDING ARBITRATION PROHIBITED

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

H. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Agreement 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 Agreement and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. 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. CRS §§24-30-202 (1) and 24-30-202.4.

[Not applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees

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

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101

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

SPs Effective 1/1/09

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22. SIGNATURE PAGE

Contract Routing Number TAA 16/83104

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

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

<p style="text-align: center;">CONTRACTOR <u>City of Colorado Springs</u></p> <p>By: _____ Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, Governor Colorado Department of Revenue Barbara J. Brohl, Executive Director</p> <p>_____</p> <p>By: _____ Mike Dixon, Senior Director Division of Motor Vehicles</p> <p>Date: _____</p>
<p style="text-align: center;">2nd Contractor Signature if Needed</p> <p>By: _____ Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	
<p>Attest:</p> <p>_____</p> <p>Sarah B. Johnson, City Clerk</p>	

EXHIBIT A – STATEMENT OF WORK

This **Exhibit A – Statement of Work** is part of that certain contract, **CMS #TAA 16/83104** (“Agreement”), by and between **City of Colorado Springs** (“Contractor”), and the State of Colorado acting by and through the Colorado Department of Revenue, Division of Motor Vehicles, Driver Testing and Education (“DOR”, “DMV” or “State”). In the event of a conflict or inconsistency between the Agreement and its exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified in **§20.1** Order of Precedence of the main body of the Agreement. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Agreement and its Exhibits.

The Contractor shall provide the following testing services to the State and applicants in accordance with this **Exhibit A**, 1 CCR 204-30 Rule 7, as currently written or hereafter amended, State laws, and pursuant to the terms of this Agreement.

- A. On behalf of the State, Contractor shall competently provide CDL driving skills testing services to the State and applicants pursuant to and consistent with the intent of all applicable federal and State laws, the terms of this Agreement; the Rules and Regulations for the Commercial Driver’s License Program, 1 CCR 204-30, Rule 7, as currently written or hereafter amended, and the current CDL Tester’s manual, as currently written or hereafter updated, and is hereby incorporated by reference. The CDL Tester’s manual is available by request through the DMV.
- B. Contractor shall at all times have a valid signed Agreement with the State prior to providing the services pursuant to this Agreement. Additionally, Contractor and the CDL Driving Skills Tester shall be in possession of a valid license in accordance with 1 CCR 204-30 Rule 7, as currently written or hereafter amended, prior to providing Services authorized by this Agreement.
- C. The Contractor shall have written permission from the landowner to administer the CDL vehicle basic control tests on areas not owned by the Contractor. This written permission, substantially in a form equivalent to Attachment A, attached and incorporated herein, shall be submitted to the State for approval prior to testing.

Attachment A
LAND USE AUTHORIZATION

The land used for the purposes of driver skill testing is not owned by the CDL Testing Unit and requires written permission from the respective landlord or land owner. Please complete this form and submit to DMV in accordance with §17 of the Agreement for approval prior to conducting driver skill testing on this property.

This authorization confirms that _____ (name of property owner) is the lawful property owner of the land located at: _____. This property will be used for the purposes of CDL driver skill testing. Access to the testing area is granted to Colorado Division of Motor Vehicles for inspections at any time.

_____ (property owner) hereby grants permission to _____ (Testing Organization), for the use of his/her land for the above stated purposes.

Landowner (signature)

Phone Number

Date: _____

This authorization expires on _____
(Date, if applicable)

For: CDL Compliance Section

EXHIBIT B – OPTION RENEWAL LETTER

Date:	Original Contract CMS #: TAA 16/83104	Option Letter # ____	CMS Routing #: TAA ____ /
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1. In accordance with §5.C of the Original Agreement, **CMS #TAA 16/83104** (“Agreement”) by and between City of Colorado Springs (“Contractor”) and the State of Colorado acting by and through the Colorado Department of Revenue, Division of Motor Vehicles (“DMV” or “State”), the State hereby exercises its option for an additional term beginning _____ and ending on _____ under the same terms and conditions specified in the Agreement. This is the _____ of two renewals available.
2. The effective date of this Option Letter is upon approval of DOR.

STATE OF COLORADO John W. Hickenlooper, Governor Colorado Department of Revenue Barbara J. Brohl, Executive Director
By: _____ Mike Dixon, Senior Director Division of Motor Vehicles
Date: _____

