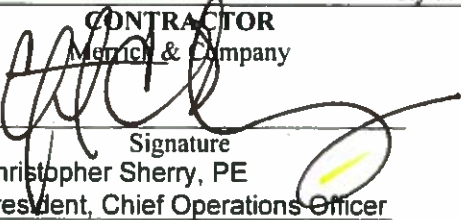



**STATE OF COLORADO MASTER
TASK ORDER CONTRACT
PROFESSIONAL SERVICES
SIGNATURE AND COVER PAGE**

| | |
|--|--|
| State Agency Department of Natural Resources Colorado Water Conservation Board 1313 Sherman St #723, Denver, CO 80203 | CMS File CMS#105275 CORE Encumbrance #MA PDAA 2018*0005 |
| Contractor Merrick & Company 5970 Greenwood Plaza Blvd. Greenwood Village, CO 80111 | Contract Performance Beginning Date The later of the Effective Date or 11/1/17 |
| Contract Maximum Amount Entire Contract term for all applicable fiscal years: Maximum of all executed task orders. | Initial Contract Expiration Date November 1, 2022 Contract Description The Contractor will complete LIDAR acquisition for areas of interest in Colorado per Federal guidelines. |

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 align="center">CONTRACTOR Merrick & Company</p>  <p align="center">Signature Christopher Sherry, PE President, Chief Operations Officer Name and Title of Signatory</p> <p>Date: October 23, 2017</p> | <p align="center">STATE OF COLORADO John W. Hickenlooper, Governor Department of Natural Resources Robert W. Randall, Executive Director</p>  <p align="center">Tina Heltzel, CWCB Budget Analyst</p> <p>Date: 10/31/17</p> |
| <p>2nd State or Contractor Signature if Needed</p> <p align="center">_____ Signature</p> <p align="center">_____ Name and Title of Signatory</p> <p>Date: _____</p> | <p align="center">LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By: _____ Assistant Attorney General</p> <p>Date: _____</p> |

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



Effective Date: 11/2/17

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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” or “Consultant”), and the STATE OF COLORADO acting by and through the Department of Natural Resources, Colorado Water Conservation Board, 1313 Sherman St #723, Denver CO 80203 (the “State” or “CWCB”). 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 Page for this Contract and shall terminate on the Initial Contract Expiration Date shown on the Signature and Cover

Page for this Contract (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Contract.

C. 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 §16, 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 End of Term Extension shall automatically terminate upon execution of a replacement contract or modification extending the total term of the Contract.

D. 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 or any Task Order ceases to further the public interest of the State, the State, in its discretion, may terminate this Contract or that Task Order in whole or in part. This subsection shall not apply to a termination of this Contract by the State for breach by Contractor, which shall be governed by §14.A.i.

i. Method and Content

The State shall notify Contractor of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract or a Task Order. A termination of all or a part of a Task Order shall not be interpreted to terminate this Contract or any other Task Order.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to §14.A.i.a.

iii. Payments

If the State terminates this Contract or a Task Order 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 under all terminated Task Orders, 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. AUTHORITY

Authority to enter into this Contract exists in §37-60-101 through 132 C.R.S. The consultant was selected using 24-30-1403 C.R.S, and the RFQ # is RFQ PDAA 2017-001.

4. PURPOSE

The Contractor will complete LIDAR acquisition for areas of interest in Colorado per Federal guidelines.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“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.
- B. **“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.
- C. **“Contract Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Contract and all Task Orders.
- D. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- E. **“End of Term Extension”** means the time period defined in §2.C
- F. **“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.
- G. **“Exhibits”** means the following exhibits attached to this Contract:
 - i. **Exhibit A, Statement of Work.**
 - ii. **Exhibit B, LIDAR Rates.**
 - iii. **Exhibit C, Option Letter.**
 - iv. **Exhibit D, Form of Task Order.**
- H. **“Extension Term”** means the time period defined in §2.C
- I. **“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.
- J. **“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.
- K. **“Initial Term”** means the time period defined in §2.B
- L. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- M. **“Project”** means a specific portion of the Work that is included in a Task Order.
- N. **“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.

- O. **“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, and State personnel records not subject to disclosure under CORA.
- P. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- Q. **“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.
- R. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.
- S. **“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.
- T. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- U. **“Task Order”** means a document issued in accordance with §6.B of this Contract that specifically describes the Work to be performed on a Project.
- V. **“Work”** means the delivery of the Goods and performance of the Services described in this Contract.
- W. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

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

6. STATEMENT OF WORK AND TASK ORDERS

A. General Statement of Work

Contractor shall complete the Work as described in this Contract and in accordance with the provisions of Exhibit A and any Task Order. 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 or a properly executed Task Order.

B. Task Orders

The State may execute Task Orders to authorize Contractor to perform portions of the Work. The State may execute Task Orders in its discretion and the State is not required to execute any minimum number of Task Orders under this Contract.

i. Task Order Development

To initiate a Task Order, the State will provide a request to Contractor describing the general scope and intent of the Work it desires Contractor to perform under that Task Order and the timeline for Contractor to submit a proposal in response to the request.

Contractor shall submit a proposal to the State, within the timeline provided by the State, in response to the State's request that contains, without limitation, a description of all of the following for the Project described in that Task Order:

- a. The final deliverables and other end results of the Project that the State will use to determine if the Project is complete and the dates on which those deliverables and other end results will be complete.
- b. All activities necessary for Contractor to complete the Project. This description may be in the form of a work breakdown structure if requested or approved by the State.
- c. All timelines and milestones that the State will use to determine if Contractor is on schedule to complete the Project. This description may be in the form of a project plan if requested or approved by the State.
- d. The total price of the Project, including a breakdown of any applicable materials costs, labor costs and other cost components as requested by the State as described in this Contract. The total price of a Project shall be determined based on the rates described in this Contract, and Contractor shall not include any work in a Task Order for which an applicable rate is not provided in this Contract.
- e. Contractor may complete a Project in phases, so long as all other requirements of this paragraph 6.B.i are included for each phase of the Project.

The State may direct Contractor to make changes to any proposal Contractor submits to the State. Contractor shall make all changes as directed by the State and may modify its price for the Project contained in that proposal to account for those changes. The State may accept or reject any proposal Contractor submits at any time, and may choose to not proceed with a Project prior to execution of a Task Order for that Project, in its sole discretion.

ii. Task Order Issuance

If the State accepts a proposal from Contractor, then the State will include that proposal as the statement of work for a Task Order. The State shall execute that Task Order in a form substantially similar to Exhibit C. Contractor shall not begin work on any Project until the Task Order for that Project is fully executed.

iii. Task Order Completion

Contractor shall perform the Project described in each Task Order that the State has executed, within the timelines and by the due dates described in that Task Order. The obligations and requirements of a Task Order shall be deemed to be obligations and requirements of this Contract.

iv. Task Order Modifications

When the Parties desire to modify a Task Order, Contractor shall update its proposal that was included in the Task Order to account for the modification the Parties desire to make. If both Parties agree to the updated proposal, they may modify the Task Order by executing an amendment to the Task Order that includes the updated proposal. No modified requirement of a Task Order shall be enforceable prior to the execution of the amendment to the Task Order that includes that modification. This paragraph 6.B.iv

shall not apply to any modification to a Task Order that only modifies timelines within a Project without changing the due date of any deliverable or other end result, or only modifies the breakdown of costs within a Project without changing the total maximum amount for any State Fiscal Year, which may be made if the State approves of the modification in writing.

v. Task Order Termination

Regardless of the date of any deliverable or other end result of a Task Order, all Task Orders shall automatically terminate upon the date that this Contract expires or is terminated for any reason, unless the State directs otherwise in writing.

7. PAYMENTS TO CONTRACTOR

A. Maximum Amount

Payments to Contractor are limited to the unpaid, obligated balance of the funds encumbered under all open executed Task Orders. The State shall not pay Contractor any amount under this Contract that exceeds the maximum of all Task Orders.

B. Payment Procedures

i. Invoices and Payment

The State shall pay Contractor in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A and the terms of each Task Order. Payment shall be made based upon the rates set forth in Exhibit B. The Contractor shall successfully complete the contract services ordered under each Task Order in accordance with the Contract requirements within the not-to-exceed price specified in each Task Order.

- a. Contractor shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- b. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Contractor and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Contractor shall make all changes necessary to correct that invoice.
- c. 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 federal funds or funds from any other non-State funds constitute all or some of the Contract Funds the State's obligation to pay Contractor shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the State's liability for such payments shall be limited to the amount remaining of such Contract Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Contract were terminated in the public interest as described in §2.D.

v. Erroneous Payments

The State may 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. The State may recover such payments 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.

vi. Consultant Certification and Adjustments for Errors

In accordance with §24 30 1404 (1), C.R.S. as amended, the Consultant has executed a schedule, which is attached hereto and made a part hereof by reference as **Exhibit B**, LIDAR Rates., in having a duly authorized representative of Consultant sign this Contract, Consultant hereby certifies:

- a. that LIDAR rates and other factual unit costs supporting the compensation to be paid by the State for these professional services are accurate, complete and current,
- b. that Consultant understands the original contract price and that any additions shall be adjusted to exclude any significant sums by which the State determines the contract price had been increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs, and that all such contract adjustments shall be made within one-year following the end of this contract.

8. REPORTING - NOTIFICATION

A. Quarterly Reports.

In addition to any reports required pursuant to §19 or pursuant to any other Exhibit, for any contract having a term longer than 3 months, Contractor shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Contract. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than 5 Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

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

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with §16, 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 §8.C shall constitute a breach of this Contract. This §8.C shall not apply if the Contract Funds include any federal funds.

9. 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.

10. CONFIDENTIAL INFORMATION-STATE RECORDS**A. Confidentiality**

Contractor shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Contractor for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure. Contractor shall not, without prior written approval of the State, use for Contractor's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Contract. Contractor shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. 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.

B. 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.

C. 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 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.

11. 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. Waiver

No consultant shall be engaged or perform work on the project wherein a conflict of interest exists, such as being connected with the sale or promotion of equipment or material which may be used on the project, provided however, that in unusual circumstances and with full

disclosure to the State of such interest, the State may permit a waiver, in writing, in respect to the particular consultant.

12. 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 with an AM Best rating of A-VIII or better.

A. Workers' Compensation

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

B. General Liability

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

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.

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. Professional Liability Insurance

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

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

E. 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.

F. 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.

G. 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 §16 within 7 days of Contractor's receipt of such notice.

H. Subrogation Waiver

All insurance policies other than Professional Liability Insurance as required in §12.E. 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.

I. Public Entities

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

J. Certificates

Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Contract with the signed contract prior to signature by the State. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Contract within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Contract within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the State, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

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, shall be 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 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 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.

14. 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 §13.B., shall have all of the remedies listed in this §14.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 cancelled by the termination notice, and may incur obligations as necessary to do so within this Contract's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

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

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

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

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

d. Removal

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

e. Intellectual Property

If any Work infringes 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 §13.B and the dispute resolution process in §15, shall have all remedies available at law and equity.

15. 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 §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the purchasing director of the Department of Natural Resources for resolution in accordance with the provisions of §24-101-301(30), C.R.S. for resolution in accordance with provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505 C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the purchasing director, 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.

16. NOTICES AND REPRESENTATIVES

Each individual identified below 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 (i) by hand with receipt required, (ii) by certified or registered mail to such Party's principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. 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 §16 without a formal amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

For the State:

Thuy Patton
CWCB
1313 Sherman ST#718
Denver, CO 80203
thuy.patton@state.co.us

For Contractor:

Doug Jacoby
Merrick Company
5970 Greenwood Plaza BLVD
Greenwood Village, CO 80111

17. 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, 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.

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.

18. 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 GIA; 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.

19. 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 anytime thereafter, this §19 shall apply. Contractor agrees to be governed by and comply with the provisions of §§24-106-103, §24-102-206, §24-106-106, and §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Contractor's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Contract, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS**A. Assignment**

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

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal and state laws and regulations, 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 §20.A., all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

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

E. Captions and References

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

F. Counterparts

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

G. Entire Understanding

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

H. Jurisdiction and Venue

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.

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 §21 of the main body of this Contract.
- ii. The provisions of the other sections of the main body of this Contract.
- iii. Exhibit A, Statement of Work.
- iv. Exhibit B, LIDAR Rates.
- v. Exhibit C, Sample Option Letter
- vi. Exhibit D, Form of Task Order

L. Severability

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

M. 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.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from 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.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §20.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.

P. Waiver

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

Q. CORA Disclosure

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

R. Standard and Manner of Performance

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

S. Licenses, Permits, and Other Authorizations.

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

their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

T. Indemnification

i. General Indemnification

To the extent authorized by law, 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) to the extent such claims are caused by a negligent act or omission of, or breach of contract by, the Consultant, its employees, agents, sub-consultants or assignees pursuant to the terms of this Contract but not to the extent such claims are caused by any act or omission of, or breach of contract by the Consultant but not to the extent such claims are caused by any act or omission of, or breach of contract by, the State, its employees, agents, other Consultants or assignees, or other parties not under the control of or responsible to the Consultant.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 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.

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

U. Force Majeure

Neither party shall be in default of its obligations under this Agreement if performance is prevented or delayed by an existing or future *force majeure* condition or any other cause beyond the reasonable control of a party to this Agreement including, without limitation, meteorological phenomenon, power failures or blackouts, strike, shortage of labor or materials, insurrection, embargo, fire, flood, earthquake, electromagnetic interference, explosion, riot, wars or armed conflicts, rebellion, civil disobedience, sabotage, epidemic, emergencies or natural disasters. The affected party shall be entitled to an equitable adjustment in schedule and/or fee for such delay.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

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

A. CONTROLLER'S 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.

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.

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101 *et seq.* C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

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 Contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (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 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 Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

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

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

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

J. VENDOR OFFSET. §§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.

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify

Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the 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 §§8-17.5-101 *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

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

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

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EXHIBIT A, STATEMENT OF WORK

Exhibit A
Scope of WORK
LIDAR RFQ

Background and Overview

The State of Colorado developed a draft Statewide Light Detection and Ranging (LiDAR) Acquisition Plan (Plan) in September 2015. This is a multiple year plan to acquire LiDAR for the entire State of Colorado for numerous uses including floodplain modeling. After the 2013 flood along the Denver Front Range and northern Colorado, the LiDAR collected by FEMA and the U.S. Army Corps of Engineers proved to be a valuable asset to local communities, state agencies, and other federal partners. In particular, the LiDAR data has provided the ability for local communities to understand the topography changes from the flood event and promote smarter planning and decision making in their recovery and rebuilding efforts to create more resilient communities.

Purpose

The Contractor will acquire accurate, high-resolution Light Detection and Ranging (LiDAR) data for areas outlined within Colorado. This data will support updating floodplain maps in accordance with FEMA's Risk Map program. The Contractor will include the following:

- Raw LIDAR data;
- Classified LiDAR point clouds;
- TIN-based DTMs;
- Bare-earth DEM;
- Breaklines;
- Control points;
- Contours;
- Documentation of system calibration, collection and processing methods, survey methods, QA , Accuracy Testing and Reporting, and metadata;
- Project management services that include progress tracking and regular communication to the CWCB Project Manager (when requested).
- Daily, weekly, or monthly, or quarterly reports of collection progress.

The Contractor shall furnish all materials, supervision, labor, equipment, and transportation, unless otherwise specified in this RFQ to complete the following tasks and deliver the listed products.

LIDAR collection and data processing shall adhere at minimum to the United States Geological Survey (USGS), [National Geospatial Program, Lidar Base Specification Version 1.2, \(2014\) standard](https://pubs.usgs.gov/tm/11b4/pdf/tm11-B4.pdf), as posted at <https://pubs.usgs.gov/tm/11b4/pdf/tm11-B4.pdf>.

In addition, the Contractor shall adhere to Federal Emergency Management Agency (FEMA) Procedure Memorandum No. 61 - Standards for Lidar and Other High Quality Digital Topography, as posted at <http://www.fema.gov/media-library/assets/documents/19742?id=4345>, and FEMA's Elevation Guidance Document dated November 2015 for LIDAR. Both standards are herewith incorporated into this Request for Qualifications (RFQ) by this reference.

Respondents are invited to present alternative proposals that cause improvements in the horizontal and/or vertical accuracies of the products, even if these proposals exceed stated standards. Each such alternative proposal shall be brief, concentrating mainly on the specific aspects that cause such improvements, plus the impact on pricing.

Respondent shall describe the following in their response: LiDAR spot size and spot spread, number of returns, intensity values, NPS, data voids, spatial distribution, scan angle, accuracy, overlap, collection conditions etc.)

Clarification, emphasis on and additions to these specifications are noted below. A summary of all requirements and deliverables can be found in Appendix B - Specification Summary.

Tasks and Deliverables

The Scope of Services encompasses 15,143 square miles located in southwest Colorado and areas in central and southeastern Colorado. The acquired LiDAR will meet the Quality Level Two (QL2) standards as outlined in the USGS-NGP Lidar base Specifications, Techniques and Methods. All deliverables will meet QL2 as well as FEMA's Elevation Guidance Document for LiDAR and other high quality digital topography for flood hazard mapping. Several counties were also identified as high priority areas for debris flow mapping.

Datums

The horizontal datum for latitude and longitude and ellipsoid heights will be the North American Datum of 1983 (NAD 83) using the most recently published adjustment of the National Geodetic Survey (NGS) (currently NAD 83, epoch 2010.00 [aka NA2011]).

The vertical datum for orthometric heights will be the North American Vertical Datum of 1988 (NAVD 88).

- The geoid model used to convert between ellipsoid heights and orthometric heights will be the latest hybrid geoid model of NGS, supporting the latest realization of NAD 83 (currently GEOD12B model).

Coordinate Reference System

Lidar data will be processed and delivered in the most accurate Coordinate Reference System (CRS) available for the project location (e.g., Colorado State Plane Coordinate System [SPCS]).

Universal Transverse Mercator (UTM) also may be used, particularly when a single suitable local SPCS is not available,

Units of Reference

All references to the unit of measure “Feet” and “Foot” shall specify “International,” “Intl,” “U.S. Survey,” or “US.” Units apply to both horizontal and vertical datums / coordinates.

Classified Point Cloud:

Contractor shall deliver a classified LiDAR point cloud containing the following:

- All project swaths, returns, and collected points, fully calibrated, adjusted to ground, and classified, by tiles. Project swaths exclude calibration swaths, cross-ties, and other swaths not used and not intended to be used, in product generation.
- Fully compliant LAS Specification version 1.4 Point Data Record Format 6, 7, 8, 9 or 10.
- If collected, waveform data in external auxiliary files with the extension .wdp. See the LAS Specification version 1.4 (American Society for Photogrammetry and Remote Sensing, 2011) for additional information.
- Correct and properly formatted georeferenced information as OGC WKT included in all LAS file headers.
- GPS times recorded as Adjusted GPS Time at a precision sufficient to allow unique timestamps for each pulse.
- Intensity values, normalized to 16-bit. See the LAS Specification version 1.4 (American Society for Photogrammetry and Remote Sensing, 2011) for additional information.
- Tiled delivery, without overlap, using the project tiling scheme.
- Classification, as defined in table 6, at a minimum.

Table 6. Minimum classified point cloud classification scheme.

| Code | Description |
|------|------------------------------------|
| 1 | Processed, but unclassified. |
| 2 | Bare earth. |
| 7 | Low noise. |
| 9 | Water. |
| 10 | Ignored ground (near a breakline). |
| 17 | Bridge decks. |
| 18 | High noise. |

Note: Class 7, Noise, is included as a convenience for the data producer. It is not required that all “noise” be assigned to Class 7.

Note: Class 10, Ignored Ground, is for points previously classified as bare-earth but whose proximity to a subsequently added breakline requires that it be excluded during Digital Elevation Model (DEM) generation.

Hydro Flattening Requirements

Breaklines of wide streams (greater than 100 feet) and waterbodies (greater than 2 acres) are required to produce the Hydrologically Flattened DEM in the USGS LiDAR specification. Breakline deliverables shall include or conform to the following procedures and specifications:

- Breaklines delivered in shapefile or file geodatabase formats, as PolylineZ and PolygonZ feature classes, as appropriate to the type of feature represented and the methodology used by the data producer.
- Breaklines in the same coordinate reference system and units (horizontal and vertical) as the lidar point delivery.
- Properly formatted and accurate georeferenced information for each feature class, stored in that format's standard file system location. Each shapefile shall include a correct and properly formatted .prj file.

Bare Earth Surface (Raster Digital Elevation Model [DEM])

Delivery of a hydro-flattened bare-earth DEM is a requirement. Bare-earth surface deliverables shall include or conform to the following procedures and specifications:

- DEM resolution as shown in the table "Digital elevation model cell size, Quality Level 0–Quality Level 3" (table 7) or as specified by CWCB Project Manager.
- An industry-standard, GIS-compatible, 32-bit floating point raster format (ERDAS .IMG preferred).
- Georeference information in or accompanying each raster file.
- Tiled delivery without overlap.
- DEM tiles with no edge artifacts or mismatch.
- Void areas (for example, areas outside the BPA but within the project tiling scheme) coded using a unique "NODATA" value. This value will be identified in the appropriate location within the raster file header or external support files (for example, .aux).
- Hydro-flattening as outlined. Depressions (sinks), whether natural or man-made, are not to be filled (as in hydro-conditioning and hydro-enforcement). The methodology used for hydro-flattening is at the discretion of the data producer (refer to appendix 2, "Hydro-Flattening Reference" for more information on hydro-flattening).
- Bridges removed from the surface (refer to the glossary for the definition of a bridge).
- Road or other travel ways over culverts intact in the surface (refer to the glossary for the definition of a bridge).

Contours

Contractor shall cut contours as specified, using the hydro-flattened DEM datasets.

Contours will be generated as needed for each specific project area acquired. Contours will be interpolated at two-foot (2') intervals, and will be based on funding availability and meet the following:

- Smoothed and non-crossing contour lines will be developed from the hydro-flattened DEM so that vertical accuracy is maintained (plus or minus 10%).
- Every fifth contour line shall be an index contour with a heavier line. Contours will be attributed as follows:
 - Index
 - Intermediate

Data set shall not include spot elevations, depression contours, or hidden contours. All contour lines shall be solid and unbroken features within each separate tile.

- Elevation values are assigned to the contour lines and carried as attributes.
- Contours will be delivered as project-wide Environmental Systems Research Institute (Esri) feature class(es) or shapefile(s)

Tiles

A single non-overlapping project tiling scheme will be established and agreed upon by the data producer and the client before collection. This scheme will be used for all tiled deliverables:

- The tiling scheme shall use the same coordinate reference system and units as the data.
- The tile size shall be an integer multiple of the cell size for raster deliverables.
- The tiles shall be indexed in x and y to an integer multiple of the x and y dimensions of the tile.
- The tiled deliverables shall edge-match seamlessly and without gaps.
- The tiled deliverables shall conform to the project tiling scheme without added overlap.

Tiling examples:

UTM Datasets

- Tiles shall be 1500 x 1500 meters named on the even UTM lines derived from the southwest corner of each tile using the last digit of the UTM zone, the three digits of the west UTM line, and four digits from the south UTM line. For example: zwwwssss o Where z = last digit of UTM zone

- o www = west limit in thousands

- o ssss = south limit in thousands

State Plane Datasets

- Tiles shall be 1 mile x 1 mile approximately or as specified in project scope and labeled according to pre-approved tiling schemes which will be provided to the contractor.

Control and Calibration Points

Contractor will establish LiDAR checkpoints, which will be used to validate the accuracy of the LiDAR point cloud. Of the total number of checkpoints, a certain number of checkpoints will be categorized as Non-vegetated Vertical Accuracy [NVA] checkpoints, and the remainder will be of the Vegetated Vertical Accuracy [VVA] checkpoint variety. The total number of lidar checkpoints will represent the minimum standards as outlined in TM11-B4 / *ASPRS Positional Accuracy Standards for Digital Geospatial Data (EDITION 1, VERSION 1.0. - NOVEMBER, 2014)*. The NVA and VVA checkpoints will be spatially distributed across the project area. Additionally the Contractor will survey a smaller quantity of checkpoints to be used independently to support the LIDAR calibration task.

The contractor shall deliver all control and reference points used to validate the point data and derivative products. They shall be delivered in Esri shapefile (.shp) format with associated FGDC-compliant metadata.

Extents

The contractor shall deliver a geo-referenced, digital, spatial representation of the precise extents of each delivered dataset. This should reflect the extents of the actual LIDAR source or derived product data, exclusive of Triangular Irregular Network (TIN) artifacts or raster NODATA areas. A union of tile boundaries or minimum bounding rectangle is not acceptable. An ESRI Polygon shapefile is preferred.

Documentation and Deliverables

Final deliverables are the sole ownership of the client (CWCB). The following outlines the proposed deliverables:

- Detailed LiDAR Mapping Report
- Raw LiDAR point cloud
 - o Calibrated

- By swath
- Classified LAS (ASPRS LAS 1.4)
 - By tile
 - Intensity values normalized to 16-bit
- Hydro-flattened breaklines
 - Project-wide Esri feature class(es) or shapefile(s)
- 1m cell size 32-bit DEM development in ERDAS IMG format
 - Bare-earth (hydro-flattened)
 - Culverts will not be removed from the DEMs
 - Bridges will be removed from the DEMs
 - By tile
- Two-foot (2') contours
 - Project-wide Esri feature class(es) or shapefile(s)
- FGDC-compliant metadata (project level)

Other deliverables can be prepared, or enhancements to such can be negotiated should the client desire ancillary products not discussed. Please see the USGS LIDAR Metadata Example provided in the USGS specifications above.

Independent Quality Control (QC)

The Contractor should be aware that CWCB will request independent verification of the deliverables to ensure that project specifications are met. The QC party will perform the following actions:

- Estimate the vertical accuracy of the control points at the 95% confidence interval;
- Estimate the vertical accuracy of the bare-earth classification against independent check points;
- Perform system verification, laser range verification, and AGPS/IMU verification (proper PDOP, etc.);
- Check that point cloud classifications were done correctly;
- Check that flight lines were flown as planned;
- Confirm that all collected LiDAR data are covered by the resulting swaths as specified, together with the required cross-ties;
- Confirm the GPS baseline lengths;
- All files are readable in CAD and ArcGIS;
- All files are named correctly;
- Confirm that the data covers the entire project area;
- Confirm that the data has no unacceptable data voids (e.g. due to incorrect flight heights, clouds, or improper flight lines);
- Confirm that the NPS adheres to project specifications; assessment will be made against single swath, first (or applicable last) return data located within the geometrically usable center portion (typically ~90%) of each swath. In order to ensure uniform densities throughout the data set:

- A regular grid, with cell size equal to the design NPS will be laid over the data.
- At least 90% of the cells in the grid shall contain at least 1 LiDAR point.
- Clustering will be tested against the 1st return only data
- Acceptable data voids identified elsewhere in this specification are excluded.

- Confirm that the horizontal and vertical datums adhere to the project specification;
- Confirm that the projection and units adhere to the project specification;
- Confirm that the LAS files are in a consistent version and have proper header information;
- Confirm that each point in the point cloud has the appropriate attributes (GPS times, coordinates, elevation, intensity, return number, return classification);
- Confirm that all points are classified into the specified scheme;
- Ensure there are no seam lines between flight swaths;
- Ensure metadata is complete;
- Confirm that DEMs have correct names and have the correct post spacing;
- Confirm that contours are at the correct interval and are indexed and labeled. Ensure no crossing contours; and
- Ensure that hydro flattening is correct by confirming that lake and pond breaklines are a constant elevation, that streams have a continuous downstream flow (no stair steps), and water points are correctly identified.

Option for Subsequent Partnerships

To the extent that other governmental jurisdictions are legally able to participate in cooperative purchasing endeavors, member jurisdictions may choose to directly contract with the Contractor for additional and related products independently of CWCB. In such case, the terms of the contract between the Contractor and CWCB shall be honored, even though the CWCB will not be facilitating the additional deliverables. The vendor shall deal directly with the jurisdiction concerning payments, disputes, and other topics related to the additional products. The CWCB shall have no responsibility or liability to the vendor, the requesting jurisdiction or any other party in connection with any such direct purchase or performance of an additional product. All partnerships pursued without CWCB facilitation shall not interfere with the work requested through this RFQ. Additional products that are independently requested are developed after deliverables for the scope of work mentioned herein are completed.

Project Coordination

Throughout the duration of the project, all members of the Project Team will coordinate, to ensure milestones are met, challenges are made aware, and to adjust to changing project priority needs. Per the specific project scope of work, meetings, teleconferences with CWCB and other Project Team members will be held on a monthly basis but may require more scheduled meetings if needed.

Project Schedule

The schedule for each project will be defined in individual task orders issued under the Master Contract.

Monitoring and Reporting Requirements

- (1) Performance measures and standards
 - a. Task memorandums will be provided to CWCB by vendor to insure that each subtask is being complete properly, prior to the final deliverable.
 - b. Monthly progress meetings where vendor will update CWCB on any issues or concerns related to completing the contract. This will insure that unexpected challenges can be quickly addressed.
 - c. Draft report submitted to CWCB for comments prior to final report and contract completion.

- (2) An accountability section
 - a. Monthly status meetings where vendor will report status of tasks and deliverables.
 - b. Monthly invoicing will include the following:
 1. Current costs
 2. Cumulative costs
 3. Percent spent
 4. Estimated percent completed
 5. Remaining budget
 - c. All deliverables and support data will be made available to State

- (c) Monitoring requirements
 - a. Monthly or quarterly progress reports
 - b. Meeting minutes

- (d) Methods and mechanisms to resolve noncompliance:
 - a. Require additional monitoring if information is not adequate for the CWCB.
 - b. Any issues that cannot be resolved by the project managers designated by the State and the contractor shall be submitted to the supervisors of the project managers. For issues that remain unresolved, the parties shall notify the DNR Purchasing Office, and shall have the option of remedies in the contract or under section 109 of the procurement code.

EXHIBIT B, LIDAR RATES

EXHIBIT B
Merrick & Company
LIDAR RATES
MA PDAA 2018*0005

| Approximate Square Mileage | QL2 - Per Square Mile Cost* | | QL1 - Per Square Mile Cost* | |
|--|-----------------------------|-----------|-----------------------------|-----------|
| | Low | High | Low | High |
| ±500 | \$ 384.00 | \$ 576.00 | \$ 600.00 | \$ 890.00 |
| ±2,500 | \$ 232.00 | \$ 348.00 | \$ 360.00 | \$ 540.00 |
| ±5,000 | \$ 208.00 | \$ 312.00 | \$ 320.00 | \$ 480.00 |
| ±10,000 | \$ 184.00 | \$ 276.00 | \$ 290.00 | \$ 430.00 |
| * Conservative ROM (Rough Order of Magnitude) Estimate (±20%) for budgeting purposes only. | | | | |
| Assumptions Used | | | | |
| Colorado-specific | | | | |
| Rectangular shape | | | | |
| Up to 5,500' in elevation change | | | | |
| USGS-NGP Lidar Base Specifications, Version 1.2 (to support potential BAA Grants)** | | | | |
| Contour interpolation NOT included | | | | |
| | | | | |
| | | | | |
| **Removal of hydro-flattening will reduce cost | | | | |

EXHIBIT C, SAMPLE OPTION LETTER

| | |
|---|--|
| State Agency Department of Natural Resources Colorado Water Conservation Board 1313 Sherman ST. #723 Denver CO 80203 | Option Letter Number Insert the Option Number (e.g. "1" for the first option) |
| Contractor Merrick & Company 5970 Greenwood Plaza Blvd. Greenwood Village, CO 80111 | Original Contract Number Insert CMS number or Other Contract Number of the Original Contract |
| Current Contract Maximum Amount Initial Term State Fiscal Year 20xx \$0.00 Extension Terms State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 State Fiscal Year 20xx \$0.00 Total for All State Fiscal Years \$0.00 | Option Contract Number Insert CMS number or Other Contract Number of this Option Contract Performance Beginning Date The later of the Effective Date or Month Day, Year Current Contract Expiration Date Month Day, Year |

1. OPTIONS:

M. Option to extend for an Extension Term

2. REQUIRED PROVISIONS:

N. In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.

3. OPTION EFFECTIVE DATE:

O. The effective date of this Option Letter is upon approval of the State Controller..

| | |
|---|--|
| <p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, Governor INSERT-Name of Agency or IHE INSERT-Name & Title of Head of Agency or IHE</p> <p>By: _____ Name & Title of Person Signing for Agency or IHE</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 style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Option Effective Date: _____</p> |
|---|--|

EXHIBIT D, SAMPLE TASK ORDER

| | |
|---|---|
| State Agency Department of Natural Resources Colorado Water Conservation Board (CWCB) 1313 Sherman ST #723 | Task Order Number Insert the Option Number (e.g. "1" for the first option) |
| Contractor Merrick & Company 5970 Greenwood Plaza Blvd. Greenwood Village, CO 80111 | Master Task Order Contract Number Insert CMS number or Other Contract Number of the Master Task Order Contract |
| Task Order Maximum Amount Total for All State Fiscal Years \$0.00 | Task Order Contract Number Insert CMS number or Other Contract Number of this Task Order |
| | Task Order Performance Beginning Date This Task Order will be effective upon signature of the State Controller or his designee. |
| | Task Order Expiration Date Month Day, Year |

In accordance with §6.B of the Master Task Order Contract referenced above, Contractor shall complete the following Project:

1. PROJECT DESCRIPTION

Contractor shall complete the Project described in Contractor's proposal that is attached hereto and incorporated herein (the "Proposal"). All terminology used in this Task Order and the Proposal shall be interpreted in accordance with the Master Task Order Contract unless specifically defined differently in this Task Order.

2. PAYMENT

The State shall pay Contractor the amounts shown in the Proposal in accordance with the requirements of that Proposal and the Master Task Order Contract. The State shall not make any payment for a State Fiscal Year that exceeds the Task Order Maximum Amount shown above for that State Fiscal Year.

3. PERFORMANCE PERIOD

Contractor shall complete all Work on the Project described in this Task Order by the Task Order Expiration Date stated above. Contractor shall not perform any Work on the Project described in the Proposal prior to the Task Order Performance Beginning Date or after the Task Order Expiration Date stated above.

4. TASK ORDER EFFECTIVE DATE:

The effective date of this Task Order is upon approval of the State Controller.

| | |
|--|--|
| CONTRACTOR Merrick & Company | STATE OF COLORADO John W. Hickenlooper, Governor Department of Natural Resources Robert W. Randall, Executive Director |
| _____ By: Name & Title of Person Signing for Contractor | _____ By: Tina Heltzel, CWCB Budget Analyst |
| Date: _____ | Date: _____ |

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

STATE CONTROLLER
 Robert Jaros, CPA, MBA, JD

By: _____

Task Order Effective Date: _____