

STATE CONTROLLER POLICY

MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS

(Does Not Apply to Capital Construction Contracts)

- 1) **Modification Tools and Use.** Fiscal rule 3-1 §6.3, provides for the use of contract modification tools and forms set forth in this Policy. The language, provisions and modification forms in this Policy are approved for use with State contracts.

All contract modification forms, other than amendments, shall be included as exhibits to the contract they modify. State Agencies and Institutions of Higher Education (IHEs) shall obtain prior written approval from the Office of the State Controller (OSC) to use these forms in a manner not described herein.

Except for amendments, which may be used for any modification, contract modification tools are not universally applicable and were created for specific contracts and scopes of services. Each modification tool shall be used only for its intended purposes, shall not be changed or combined with other contract modifications, and shall only be included in contracts that contain proper references to the specific modification tool. These forms satisfy OSC requirements; however, Agencies or IHEs must still comply with any other applicable statutes and rules governing a contract, including State procurement rules and personal services review by Department of Personnel and Administration Division of Human Resources (DPA/DHR).

The following table outlines the modification tools and their designated uses. Please track use of these tools in CLIN Contract Mod field using the assigned codes set forth below (use OC for original contracts).

Modification Tool:	Signed By:	Used To:
Options (OP code on CLIN)	State	<ul style="list-style-type: none">➤ Extend contract term – renewal➤ Increase or decrease quantities➤ Increase or decrease contract value➤ Initiate next phase of contract
Grant Funding Letters (GF code on CLIN)	State	<ul style="list-style-type: none">➤ Change in grant funding only for federal or State grants
Change Orders (ZZ code on CLIN) Do Not Use Change Orders For New Contracts After August 1, 2008	State and Contractor	<ul style="list-style-type: none">➤ Within Statement of Work:<ul style="list-style-type: none">▪ Change specifications▪ Change contract value using prices established in original contract▪ Change contract term when change is due to change in specifications or time of performance
Task Orders (TO code on CLIN)	State and Contractor	<ul style="list-style-type: none">➤ Order goods or services based on rate and terms established in Master Contracts
Amendments (AM code of CLIN)	State and Contractor	<ul style="list-style-type: none">➤ Revise Statement of Work, contract terms, or any other change➤ Can be used at any time instead of other modification tools
Assignments-Consent to (AS code on CLIN)	State, Contractor and Assignee	<ul style="list-style-type: none">➤ Used to transfer performance obligations from original Contractor to another contractor➤ Parties change, terms do not, and original Contractor's further rights, duties, or obligations are defined by the assignment

2) Definitions.

- a. **Unilateral.** Actions only requiring one party to act; for example, signing an Option Letter.
b. **Bilateral.** Actions requiring all parties to act; for example, signing a Contract Amendment.
c. **The State.** (the term "the State" as used in this Policy includes Agencies and IHEs).

David J. McDermott, CPA
State Controller

STATE CONTROLLER POLICY

OPTION TYPES

1) Option to Extend Term

- a. Purpose:** To extend the original term and all conditions of a State Contract for a predetermined period of time, at the same rates and terms as the original contract.
- b. Time to Exercise:** This option shall be exercised before the date the Contract expires or terminates.
- c. Example:** The State contracts for a year of computer maintenance service with two optional one-year extensions based on vendor performance. The State may exercise its option for continued service for another year before the end of the current contract term at the same prices.
- d. Required Language:** The following provision shall be included in the original Contract:
“The State may require continued performance for a period of _____ at the same rates and same terms specified in the Contract. If the State exercises the option, it will provide written notice to Contractor at least 30 days prior to the end of the current contract term in a form substantially equivalent to Exhibit _____. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed _____.” (Note: 5 years is maximum allowable)

2) Option to Increase or Decrease Quantities and Total Price

- a. Purpose:** To increase or decrease the quantity of goods and/or level of services being provided, and concomitantly the total contract value, based upon the same unit rate or price (units may be hours, quantities, etc.) and terms as the original contract.
- b. Time to Exercise:** This option shall be exercised before the Contract term expires or terminates.
- c. Examples**
 - i.** The State buys 500 tests of water for bacteria levels at a specified rate for each test and receives an option to increase the number of tests to 750. The State may exercise its option by processing an option notifying the vendor to perform the additional tests at the same rate.
 - ii.** The State contracts for trash removal services. The total maximum cost is based upon a unit rate charged for each dumpster emptied by the vendor on a schedule that the State may change. The State subsequently decides its needs would be better met by a different schedule. The State may exercise its option and increase the total maximum price in the contract based on the new schedule.
- d. Required Language:** The following provision shall be included:
“The State may increase or decrease the quantity of goods/services described in section/schedule/exhibit based upon the rates established in the Contract. If the State exercises the option, it will provide written notice to Contractor as least _____ days prior to the end of the current contract term in a form substantially equivalent to Exhibit _____. Delivery/performance of the goods/service shall continue at the same rates and terms. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original contract.”

3) Options for Phased Performance.

- a. Purpose:** To initiate a subsequent phase for a contract that provides for phases.
- b. Time to Exercise:** This option shall be exercised before the Contract term expires or terminates.
- c. Example:** The State contracts for IT services to be completed in several phases. The original contract specifies phased deliverables and consideration for those deliverables. Each phase is unique, and the State has the option to instruct the vendor to begin work on the next after prior phase is successfully completed.
- d. Mandatory Clause:** The following clause shall be included
“The State may require the contractor to begin performance on the next contract phase as outlined in the Statement of Work in Exhibit _____ and at the same terms and same conditions stated in the contract. If the State exercises this option, it will provide written notice to the contractor at least _____ days prior to the end of the current phase in a form substantially equivalent to Exhibit _____. If exercised, the provisions of the Option Letter shall become part of and be incorporated into the original contract.”

4) Approvals. Options require the same reviews and approvals as the contracts they modify, subject to the following exceptions:

- a.** Options to extend statewide Price Agreements by the State Purchasing Office not involving encumbrances do not require OSC approval.
- b.** Options (i) limited to extensions of time, (ii) which reduce payments to vendors, (iii) which reduce vendors' scope of work, or (iv) to initiate a phase, do not require review by DPA/DHR.

5) Unilateral Nature. Options are unilateral exercises of a right initiated at the State's discretion

STATE CONTROLLER POLICY

SAMPLE OPTION LETTER

Date:	State Fiscal Year:	Option Letter No.	CMS Routing #
-------	--------------------	-------------------	---------------

- 1) **OPTIONS:** Choose all applicable options listed in §1 and in §2 and delete the rest.
- a. Option to renew only (*for an additional term*)
 - b. Change in the amount of goods within current term
 - c. Change in amount of goods in conjunction with renewal for additional term
 - d. Level of service change within current term
 - e. Level of service change in conjunction with renewal for additional term
 - f. Option to initiate next phase of a contract
- 2) **REQUIRED PROVISIONS.** All Option Letters shall contain the appropriate provisions set forth below:
- a. **For use with Options 1(a-e):** In accordance with Section(s) _____ of the Original Contract routing number _____ between the State of Colorado, Insert Name of Department or Higher Ed Institution, and Contractor's Name, the State hereby exercises its option for an additional term beginning Insert start date and ending on Insert ending date at a cost/price specified in Section _____, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Identify the Section, Schedule, Attachment, Exhibit etc.
 - b. **For use with Option 1(f), please use the following:** In accordance with Section(s) _____ of the Original Contract routing number _____ between the State of Colorado, Insert Name of Department or Higher Ed Institution, and Contractor's Name, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc for the term beginning Insert start date and ending on Insert ending date at the cost/price specified in Section _____.
 - c. **For use with all Options 1(a-f):** The amount of the current Fiscal Year contract value is increased/decreased by \$ amount of change to a new contract value of Insert New \$ Amt to as consideration for services/goods ordered under the contract for the current fiscal year indicate Fiscal Year. The first sentence in Section _____ is hereby modified accordingly. The total contract value including all previous amendments, option letters, etc. is Insert New \$ Amt.
- 3) **Effective Date.** The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

STATE OF COLORADO Bill Ritter, Jr. GOVERNOR Name of Agency or IHE
_____ By: Insert Name & Title of Person Signing for Agency or IHE
Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
David J. McDermott, CPA

By: _____
Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval

Date: _____

STATE CONTROLLER POLICY

GRANT FUNDING CHANGE LETTERS

- 1) **Purpose.** The use of Grant Funding Change Letters is limited to unilaterally increasing or decreasing funding Agencies provide to sub-grantees from federal or State grants when Agencies lack or have little control over the scope of services being provided by the sub-grantee. For example:
 - a. A federal department provides funding to counties through a grant administered by an Agency, the terms of which require counties to provide specified services. The Agency enters into a grant fund distribution agreement with the counties. The federal department subsequently either adds to or reduces the amount of the original award. The Agency then issues Grant Funding Letters to the counties reflecting the change in the funding.
 - b. An Agency has distributed funds to provide services. A sub-grantee will not use all of its allocated funds and the Agency wishes to reallocate these funds to one or more other sub-grantees. The Agency issues a Grant Funding Letter decreasing the amount for the first sub-grantee and issues additional grant funding letters increasing the amount for other sub-grantees.
- 2) **Mandatory Clause.** The following clause shall be included in all original Grant Contracts to issue Grant Funding Change Letters:

*The State may increase or decrease funds available under this Contract using a Grant Funding Letter substantially equivalent to **Exhibit** . The Grant Funding Letter is not valid until it has been approved by the State Controller or designee.*
- 3) **Approval.** Grant Funding Change Letters require the same reviews, approvals, and signatures as the Contracts they modify.
- 4) **Conditions of Use.** Grant Funding Change Letters shall be issued during the term of the Contract and may not be used after expiration or termination or to extend the term of the Contract.

STATE CONTROLLER POLICY

SAMPLE GRANT FUNDING CHANGE LETTER

Date:	State Fiscal Year:	Grant Funding Change Letter #	CMS Routing #
-------	--------------------	-------------------------------	---------------

TO: Insert Grantee's name

In accordance with Section _____ of the Original Contract routing number _____ between the State of Colorado, Insert Name of Department or Higher Ed Institution, and Contractor's Name beginning Insert start date and ending on Insert ending date, the undersigned commits the following funds to the Grant:

The amount of grant funds available and specified in Section _____ is increased or decreased by \$amount of change to a new total funds available of \$ _____ for the following reason: _____ . Section _____ is hereby modified accordingly.

This Grant Funding Letter does not constitute an order for services under this Grant.

The effective date of hereof is upon approval of the State Controller or _____ , whichever is later.

STATE OF COLORADO Bill Ritter, Jr. GOVERNOR Insert Name of Agency or IHE
_____ By: Insert Name & Title of Person Signing for Agency or IHE
Date: _____

ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER David J. McDermott, CPA
By: _____ Insert Name of Agency or IHE Delegate-Please delete if grant will be routed to OSC for approval
Date: _____

STATE CONTROLLER POLICY

TASK ORDERS

- 1) **Purpose.** Task Orders are bilateral, i.e., they require both Parties to agree. They are used to order goods and/or services based on provisions agreed to in a Master Contract (rates should be included unless there is a documented reason to exclude them). As specific tasks are identified the Parties agree on a Statement of Work and the maximum price by issuing a Task Order.
- 2) **When Used.** Task Orders are used with Master Contracts containing the following encumbrance provisions:
 - a. Not to exceed amount included in Master Contract, which also encumbers entire amount. Task Order used to begin performance.
 - b. Not to exceed amount included in Master Contract; Task Order encumbers a specific amount and begins performance.
 - c. Not to exceed amount not in Master Contract; but is included in Task Orders that encumbers a specific amount and begins performance.
- 3) **Examples.**
 - a. Parks has a Master Contract with the U.S. Forest Service to improve trails. Once a specific project is identified the Forest Service submits a proposal detailing the work and the total price for the work based on the rates established in the Master Contract. If Parks accepts the proposal, the Parties execute a Task Order, the form of which is similar to an exhibit attached to the Master Contract.
 - b. DOW has a Master Contract that sets the rates for helicopter usage. The State wants to perform an aerial survey and the Parties determine the total cost of the flight based upon such rates. The Parties execute a Task Order detailing the flight plans and the maximum amount payable.
 - c. DPA has a Master Contract with RTD for eco passes for State employees. The Master Contract allows State agencies to acquire eco passes for their employees by executing a Task Order.
- 4) **Mandatory Clauses for Master Contracts using Task Orders.**
 - a. All Master Contracts shall contain the following clauses when using Task Orders:

*Tasks shall be defined, negotiated, and ordered by agreement of the Parties based on the rates established in **Exhibit** and are subject to the provision of this Contract. The State is not committing to issue any minimum number of Task Orders by entering into this contract. Changes to any provision hereunder, including, but not limited to prices specified, require a written amendment signed by the State Controller or designee.*

*Task Orders issued hereunder shall be processed as follows. First, the State shall specify the desired services and any requirements. Contractor shall propose a price using the rates established in **Exhibit**. The proposal shall be in a form acceptable to the State and include all pertinent information such as a Statement of Work, proposed time of performance, estimated number of hours, material costs, etc. Once the Parties agree regarding the foregoing, they shall prepare and execute a Task Order in a form similar to that attached hereto as **Exhibit**.*

Performance of the obligations set forth in the Task Order are subject to the provisions of this Contract. Contractor warrants that it will successfully complete its obligations under the Task Order within the stated time and price. The State is not obligated to perform its obligations under the Task Order until the State Controller or designee approves it.”
 - b. Master Contracts under §2(a) above, do not require an extra clause as the entire amount is encumbered on the Master Contract and Task Orders are merely used to begin performance.
 - c. Master Contracts under §2(b) above, shall contain the following clause in order to encumber all available funds or to establish an amount that shall not be exceeded:

The cumulative not-to-exceed amount for all Task Orders issued pursuant to this contract is \$. The State’s financial obligation is limited to this amount, and Contractor shall not accept Task Orders resulting in a cumulative amount in excess thereof. Increases or decreases to the not-to-exceed amount require an amendment approved by the State Controller or designee.

STATE CONTROLLER POLICY

d. Master Contracts under §2(a) above, shall contain the following clause in order to encumber all available funds or to establish an amount that shall not be exceeded:

Increases or decreases to the not-to-exceed amount of a Task Order require an amendment approved by the State Controller or designee.

- 5) **Approvals.** Task Orders require the same reviews, approvals, and signatures as the Contracts they modify.
- 6) **Conditions of Use.** Task orders shall be processed during the Master Contract term, may not be used after expiration or termination of the Master Contract, and the tasks shall be completed before the Master Contract expires or terminates.

STATE CONTROLLER POLICY

SAMPLE TASK ORDER LETTER

Date:	State Fiscal Year:	Task Order Letter #	CMS Routing #
--------------	---------------------------	----------------------------	----------------------

In accordance with Section _____ of the Master Contract routing number _____ between the State of Colorado, Insert Name of Department or Higher Ed Institution, and Contractor's Name beginning Insert start date and ending on Insert ending date, the provisions of the Contract and any amendments thereto affected by this Task Order are modified as follows

- 1) Task Order Description.** Contractor shall perform the task(s) listed in Contractor's Task Order proposal dated _____, which is incorporated by reference herein as Task Order # _____ in accordance with the provisions of the Master Contract (CLIN routing # _____).
- 2) Price/Cost.** The maximum amount payable by the State for performance of this Task Order is \$ _____. The total Contract value including all previous amendments, Task Orders, etc., is \$ _____.
- 3) Performance Period.** Contractor shall complete its obligations under this Task Order on or before _____.
- 4) Effective Date.** The effective date hereof is upon approval of the State Controller or _____, whichever is later.

THE PARTIES HERETO HAVE EXECUTED THIS TASK ORDER

*** 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.**

CONTRACTOR Insert Legal Name of Contractor	STATE OF COLORADO Bill Ritter, Jr. GOVERNOR Insert Name of Agency or IHE
By: Insert Name of Authorized Individual Title: Insert Official Title of Authorized Individual	By: _____ By: Insert Name & Title of Person Signing for Agency or IHE
_____ *Signature	

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER David J. McDermott, CPA
By: _____
Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval
Date: _____

STATE CONTROLLER POLICY

AMENDMENTS

- 1) **Purpose.** Amendments shall be used to modify, change, add to, or delete State contracts in any situation not specifically covered in the other modification tools listed in this Policy. Agencies and Institutions of Higher Education may also use them in lieu of any other contract modification tool except Assignments. Amendments are bilateral, i.e., they require the consent of all Parties.
- 2) **Examples.**
 - a. The State wants to add to the scope of work. An Amendment adding the work and increasing the total contract value is required.
 - b. A contract expires on April 15th but the Contractor has not finished the work due to weather and the State is willing to extend the completion date. An Amendment extending the completion is required before the contract term expires.
 - c. The State wants to (i) exercise an option to renew included in the contract and (ii) at the same time to expand the scope of work which requires increased funding. Since an Amendment is required to expand the scope of work, it makes sense to address the renewal in the same document, although the State could do (i) and (ii) separately, as an Option Letter and an Amendment, respectively.
- 3) **Mandatory Clauses for Amendments.** Contracts do not require any specific language to allow for Amendments as the Parties can always mutually agree to a lawful modification. However, language shall not be included in a State contract that allows the Parties to amend a contract by verbal agreement, by letter, or any other means other than a written Amendment signed by both Parties.
- 4) **§6 of the Sample Amendment.** List all modifications adding as many subsections as needed. A good practice is to refer to the specific provision in the original Contract or related modification that is being modified. As with any contract provision, modifications should be drafted so that a third party can understand what it is supposed to accomplish and why the change is being made. Specific topics to address include the following:
 - a. **Justification.** The justification for each modification shall be set forth with the modification; for example:
 - i. The performance period under §5 of the Contract is extended one month due to inclement weather that interfered with timely performance by Contractor.
 - ii. Contractor shall be paid an additional sum of \$50,000 under §4 of the Contract to cover additional work as set forth in the Exhibit A, attached hereto and incorporated by reference herein.
 - b. **Exhibits.** Modifications may be set forth in Exhibits. As with any agreement, if the modification appears on an attached Exhibit, specifically identify and reference it in the Amendment and cross-reference the Exhibit to the Amendment; for example,
 - i. **Amendment.** Exhibit A, called Project Budget, attached hereto and incorporated by reference herein, modifies the budget.
 - ii. **Exhibit.** Exhibit A-Project Budget to Amendment 1 to CLIN 09OSC00481 between the State and the Denver Broncos.
 - c. **Naming.** Practice Tip: If the original contract has an Exhibit A, it is a better practice to use a different numbering or lettering scheme (A1 or simply 1) in modifications so that they are easier to differentiate, especially if you don't add a complete description as set forth in §4(b)(ii), above.
- 5) **Approvals.** Amendments require the same reviews, approvals, and signatures as the Contracts they modify.
- 6) **Conditions of Use.** Amendments may be processed at any time before, but not after, a contract terminates or expires. The information packet accompanying any amendment sent to the OSC for review shall include a copy of and a list of all amendments and other contract modifications related to the original contract.

STATE CONTROLLER POLICY

SAMPLE CONTRACT AMENDMENT

Amendment #	Original Contract CMS or CLIN #	Amendment CMS #
-------------	---------------------------------	-----------------

1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between Insert Contractor's Full Legal Name (& dba if applicable)(hereinafter called "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Insert Name of Department or Institution of Higher Education, Insert Division Name or delete if not applicable, (hereinafter called the "Insert acronym or abbreviated name for the Dept, Institution, Division, etc.").

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (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) FACTUAL RECITALS

The Parties entered into the Contract for/to Insert a very short description of original contract's purpose, e.g., to lease computers, assist the disabled or provide lawn services, etc.

4) CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment. If applicable, such Special Provisions are attached hereto and incorporated by reference herein as **Exhibit Insert Exhibit # or letter**.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6) MODIFICATIONS.

The Contract and all prior amendments thereto, if any, are modified as follows: List all modifications to the original contract that would include additions or deletions to provisions, terms, conditions, statement of work, exhibits, attachments, etc., adding as many subsections as needed. If it is on an Exhibit, specifically identify and reference it. A good practice is to refer to the specific provision in the original Contract or related modification that is being modified.

a. Heading

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

b. Heading

YYYYYYYYYYYYYYYYYYYYYYYY

7) START DATE

This Amendment shall take effect on the later of its Effective Date or Month Day, Year.

8) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

STATE CONTROLLER POLICY

9) AVAILABLE FUNDS

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

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

*** 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 Insert Legal Name of Contractor</p> <p>By: Insert Name of Authorized Individual Title: Insert Official Title of Authorized Individual</p> <p>_____</p> <p style="text-align: center;">*Signature</p>	<p style="text-align: center;">STATE OF COLORADO Bill Ritter, Jr. GOVERNOR Insert Name of Agency or IHE</p> <p>By: _____ By: Insert Name & Title of Person Signing for Agency or IHE</p>
---	--

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: _____</p> <p>Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Date: _____</p>
--

STATE CONTROLLER POLICY

ASSIGNMENTS

- 1) **Purpose.** Assignments are a special type of amendment used to effectuate a change of parties with the new Contractor (assignee) replacing the original Contractor (assignor) in whole or in part regarding future duties or obligations under the contract. The consent of all parties is required for an Assignment unless the original contract specifies otherwise.
- 2) **Effect.** The parties to the contract change, but the contract provisions do not (changes in provisions require an amendment, which could also encompass an assignment if they are being done concurrently). Once an Assignment is effective, further rights, duties, or obligations under the contract of the assignor and the assignee, are defined by the Assignment. In general, the State continues to hold the assignor responsible for the assigned performance due under the Contract even if the assignee is primarily responsible thereafter. This differs from a Novation under which the original contractual obligations are extinguished and the State no longer holds the original contractor responsible for any future performance and looks solely to the replacement contractor. The language of §6(a) of the Sample Assignment now addresses the issue that occurs when mergers or assumptions of contracts by a parent company cause the assignor to no longer exist.
- 3) **Examples.**
 - a. Assignor, an individual, is not able to perform lawn care duties due to a debilitating accident. Assignee is willing to assume the remaining duties. Unless the contract addressed this issue, the State is not obligated to consent to an Assignment, but probably would if the assignee is as competent as the assignor.
 - b. Assignor is a specialized engineering firm seeking to assign performance of a task for which it was specifically hired to a general engineering firm. The State should not consent to this assignment absent specific assurances and evidence that assignee could properly perform the task and would continue to hold assignor secondarily liable until the task was properly performed.
 - c. Assignor sells all of its rights to future payments to assignee (often called a “factor”) but continues to perform the obligations under the contract. This is not typical for State Contracts, but is possible. This type of assignment would generally be specified in the contract and not require the State’s consent, rather only a notice of whom to pay.
- 4) **Provisions Concerning Assignments.** State Contract should generally contain a provision that prohibits assignment of Contractor performance absent written consent of all parties, including the State. The provisions contained in an Assignment between assignors and assignees are extremely varied and should be attached as an exhibit to the OSC Consent to Assignment form between the assignors, assignees, and the State.
- 5) **Approvals.** Assignments require the same reviews, approvals, and signatures as the contracts they modify, and in addition those of the assignee.
- 6) **Conditions of Use.** Assignments may be processed at any time before, but not after, a contract terminates or expires.
- 7) **Encumbrance Requirement:** Assignments require two encumbrance documents. The first deducts all funds related to the assignor (monies are calculated from the date on the notice letter that the State received from the company that a change has taken place). The second is a new encumbrance that credits the previously deducted funds to the assignee.

STATE CONTROLLER POLICY

SAMPLE CONSENT TO ASSIGNMENT

Assignment #	Original Contract CMS or CLIN #	Assignment CMS #
--------------	---------------------------------	------------------

1 PARTIES

This Consent to Assignment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between Insert Assignor/Original Contractor's Full Legal Name (& dba if applicable)(hereinafter called "Assignor"), Insert Assignee/New Contractor's Full Legal Name (& dba if applicable)(hereinafter called "Assignee"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Insert name of Department or Institution of Higher Education, Insert Division Name or delete if not applicable, (hereinafter called the "Insert acronym or abbreviated name for the Dept, Institution, Division, etc.").

2 EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Consent to Assignment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Assignee 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 FACTUAL RECITALS

The Parties to this Assignment desire to replace Assignor under the Contract and substitute Assignee to the extent provided for herein. Assignor and Assignee hereby represent to the State that they are parties to a binding agreement assigning all of Assignor rights and obligations under the Contract to Assignee.

4 CONSIDERATION-COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Contract. Assignor and Assignee agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for the State's consent to this assignment.

5 LIMITS OF EFFECT

This Consent to Assignment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except to the extent specifically modified hereby.

6 EFFECT OF ASSIGNMENT

When this Assignment takes effect, Assignee shall be substituted for Assignor under the Contract, subject to the following provisions:

- a. Assignee shall thereafter perform all of Assignor's obligations under the Contract except to the extent limited by **Attachment A**, if any, (the assignment agreement between Assignor and Assignee), which if attached hereto is incorporated by reference herein. Regarding **Attachment A** (check one):
 - i. **Attachment A** is attached and does exist.
 - ii. **Attachment A** is not attached and does not exist.
- b. Assignee shall perform all assigned duties and obligations of Assignor as if it were the original Contractor, the State shall look to Assignee for all such performance, and Assignor shall not be liable for any further performance thereof except to the extent Assignee fails to properly perform, in which event, Assignor, if Assignor still exists as an entity following this Assignment, shall correct such performance if requested to do so by the State.
- c. Hereinafter, the term "Contractor" as used in the Contract and any amendment thereto refers to Assignee.

7 START DATE

This Assignment shall take effect on the later of its Effective Date or Month Day, Year.

8 WAIVER

Assignor hereby waives any and all rights and claims, known or unknown, it may have against the State, effective as of the Effective Date of this Assignment. All payments and reimbursements previously made by the State to Assignor, and all other previous actions taken by the State under the Contract, shall be considered to have discharged any State obligations to Assignor thereunder. All payments made by the State after the Effective date of this Assignment in the name of or to Assignor shall have the same force and effect as if made to Assignee, and shall constitute a complete discharge of the State's obligations under the Contract to the extent of the amount paid.

9 ORDER OF PRECEDENCE

STATE CONTROLLER POLICY

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Consent to Assignment and any of the provisions of the Contract or **Attachment A** hereto, the provisions hereof shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

10 AVAILABLE FUNDS

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

11 CONSENT TO ASSIGNMENT

The State hereby consents to the assignment of this Contract between Assignor and Assignee subject to the provisions of this Consent to Assignment.

THE PARTIES HERETO HAVE EXECUTED THIS ASSIGNMENT

*** Persons signing for Assignor and Assignee hereby swear and affirm that they are authorized to act on behalf of the Assignor and Assignee, and acknowledge that the State is relying on their representations to that effect.**

ASSIGNOR Insert Legal Name of Assignor By: Insert Name of Authorized Individual Title: Insert Official Title of Authorized Individual _____ *Signature	ASSIGNEE Insert Legal Name of Assignee By: Insert Name of Authorized Individual Title: Insert Official Title of Authorized Individual _____ *Signature
--	--

STATE OF COLORADO Bill Ritter, Jr. GOVERNOR Insert Name of Agency or IHE Insert Name & Title of Head of Agency or IHE _____ By: Insert Name & Title of Person Signing for Agency or IHE
--

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Assignment is not valid until signed and dated below by the State Controller or delegate. Assignee is not authorized to begin performance until such time. If Assignee begins performing prior thereto, the State of Colorado is not obligated to pay Assignee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER David J. McDermott, CPA By: _____ Insert Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval Date: _____
