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| DEPARTMENT OR AGENCY NAME |
| Department of State |
| CONTRACT ROUTING NUMBER |
| VAA0800004 |

INFORMATION TECHNOLOGY SERVICES CONTRACT

THIS CONTRACT, dated this ___th day of January, 2008, by and between the State of Colorado, for the use and benefit of the Department of State, located at 1700 Broadway, Suite 250, Denver, Colorado, 80290, (the "State"), and LEDS, LLC a Colorado Limited Liability Company, located at 3957 Lazy K Drive, #11, Castle Rock, Colorado 80104 ("Contractor").

FACTUAL RECITALS

- A. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this contract through the Colorado Financial Reporting Systems (COFRS).
- B. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
- C. Pursuant to Section 1-10-105, C.R.S., after receiving the final abstracts of votes cast for all elections from counties, the State is required to prepare and certify an official statewide abstract of votes cast in an election.
- D. The State has determined the Contractor is qualified, ready, willing and able to provide the services and products needed for the State to produce such an abstract.

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this contract, the State and Contractor agree as follows:

AGREEMENT

1. Definitions

The following terms as used in this contract shall be construed and interpreted as follows, unless the context otherwise expressly requires a different construction and interpretation:

- 1.1 "Breach of Data Security" means the unauthorized acquisition of unencrypted computerized data that compromises the security, confidentiality, or integrity of information used or maintained by Contractor in conjunction with this contract.

- 1.2 **"Compensation"** means the funds payable to **Contractor** by the **State** which are related to the Products and/or Services, described in the Statement of Work set forth on **Exhibit A** (Statement of Work), attached hereto and incorporated herein.
- 1.3 **"Contract"** means this contract for Services and/or Products, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this contract, and any future modifying agreements, exhibits, attachments or references that are incorporated into this contract pursuant to State Fiscal Rules and Policies.
- 1.4 **"Exhibit"** means a statement of work document, schedule, budget, or other identified exhibit which has been incorporated into and attached to this contract.
- 1.5 **"Intellectual Property"** means any and all know-how, inventions, patents, copyrights, models, designs, diagrams, specifications, service marks, trademarks, trade dress, trade secrets, test results, knowledge, research, techniques, discoveries, regulatory filings, data, source codes, object codes, production methods, technology, specification of materials, formulae, methods of formulation, processes or other information (in tangible or intangible form), other industrial or proprietary rights, and all present and future title, interest and rights pertaining thereto, any documentation relating thereto, and any and all applications for any of the foregoing, whether or not patented, patentable or registered as of the effective date of this contract or at any later date.
- 1.6 **"Products"** means Software and copies thereof, licenses, user documentation, upgrade plans, support, hardware and other products, described on **Exhibit A** (Statement of Work).
- 1.7 **"Services"** means services performed or tangible material produced or delivered in the performance of services.
- 1.8 **"Software"** means the executable code version of software Product(s) set forth on **Exhibit A**, attached hereto and made a part hereof.
- 1.9 **"Work Product"** means the Software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by **Contractor** in the performance of its obligations under this contract.
- 1.10 **"Abstract"** means the official publication of votes cast for all statewide elections held in the year of the general election, inclusive of the results of the odd-number year election immediately preceding that general election.

2. **Statement of Work**

- 2.1 **Contractor** shall perform the Services and provide the Products (if applicable) described in **Exhibit A** (Statement of Work).
- 2.2 Bilateral modifications must be executed by formal amendment to this contract, approved in accordance with Colorado State law and State Fiscal Rules.

3. **Performance Standard**

- 3.1 **Contractor** shall perform the Services and deliver the Products described in **Exhibit A** (Statement of Work) in accordance with the highest standard of care, skill and diligence provided by a professional person or company in performance of work similar to the Services, and all services, and all consumables, products, and materials used in performance of the Services and the delivery of Products shall be of good quality and free from faults and defects. **Contractor** shall re-perform any Services at no additional charge where it is demonstrated that erroneous results were created through some fault on the part of **Contractor** during the performance of the Services.

- 3.2 Time is of the essence for the performance of this contract. The failure of **Contractor** to complete the project by the date specified in this contract shall be grounds for termination of **Contractor** for default by the **State**, subject to adjustment or extension in the time for performance, agreed to by the **State**, in its sole discretion.

4. Performance Term

- 4.1 This contract shall be effective upon approval by the Colorado State Controller, or authorized delegate, or on January 28, 2008, whichever is later (the "Effective Date") and extend through April 30, 2009. Performance of this contract shall commence as soon as practicable after the Effective Date and shall be undertaken and performed in the sequence and manner set forth in **Exhibit A** (Statement of Work).
- 4.2 In the event the **State** desires to continue the Services and/or Products and a replacement contract or amendment to the existing contract has not been fully approved by the termination date of this contract, the **State**, upon written notice to **Contractor**, may unilaterally extend this contract for a period of up to two (2) months. This contract shall be extended under the same terms and conditions as set forth herein, including, but not limited to prices, rates and delivery requirements. This extension shall terminate upon the first to occur of the end of the two (2) month period and the execution of the replacement contract and/or amendment to the existing contract by the Colorado State Controller, or an authorized delegate.
- 4.3 In the event the **State** desires to continue the Services and/or Products through a replacement contract or amendment to the existing contract, compensation to the **Contractor** for the first additional year shall be at a base rate of **\$38,150.00 (Thirty-eight thousand one hundred fifty and 00/100 dollars)**; subsequent years shall be compensated at the base rate compounded annually at the rate of nine percent (9%).

5. Compensation

- 5.1 Payment of compensation for the performance of the Services and delivery of Products required by this contract and **Exhibit A** (Statement of Work) shall be made as earned, in whole or in part, from available **State** funds encumbered for such purposes, in a maximum amount not to exceed **\$84,900.00 (Eighty-four thousand nine hundred and no/100 dollars)**. Satisfactory performance and/or delivery under the terms of this contract shall be a condition precedent to the **State's** obligation to compensate **Contractor**.
- 5.2 The maximum compensation payable under this contract, and under any renewal hereof, shall include all **Contractor** fees, costs and expenses, including but not limited to, labor costs, rent or mortgage payment, travel expenses, overhead, parts, repairs and replacements, mileage, supplies, mailing, testing, communications, reporting, debugging, delivery charges or other operation or contract expenses.
- 5.3 The **State** shall not be liable to **Contractor** for payment of products or services or for costs or expenses incurred by **Contractor** prior to the Effective Date.

6. Availability of Funds

- 6.1 This contract is contingent upon the continuing availability of **State** appropriations as provided in Section 2 of the Colorado Special Provisions, incorporated as a part of this contract. The **State** is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If Federal appropriations or grants fund this contract in whole or in part, the contract is subject to and contingent upon the continuing availability of appropriated Federal funds for this contract. If **State** of Colorado or Federal funds are not appropriated, or otherwise become unavailable to fund this contract, the **State** may immediately terminate the contract in whole or in part without further liability.

7. Billing/Payment Procedure

- 7.1. The **State** shall establish billing procedures and pay **Contractor** the contract price or rate for Services performed, reviewed, and accepted or Products delivered, inspected, and accepted pursuant to all the terms and conditions of this contract, including without limitation, performance, quality, milestones and completion requirements for payment set forth in **Exhibit A** (Statement of Work) and the **State's** inspection and acceptance rights in Section 9. **Contractor** shall submit invoices for payment on forms and provide requested documentation in a manner prescribed or approved by the **State**. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds encumbered for the purchase of the described Services and Products. Incorrect payments by the **State** to **Contractor** due to omission, error, fraud, or defalcation shall be recovered from **Contractor** by deduction from subsequent payments under this contract or other contracts between the **State** and **Contractor** or collected as a debt due to the **State**.
- 7.2. Invoices and payments shall be mailed using the US Postal Service or other delivery service with a properly addressed stamped envelope to the address specified by the **Contractor** on form W-9 or other similar form and by the **State** in its billing procedures.
- 7.3. The **State** shall make payment in full with respect to each invoice within forty-five (45) days of receipt thereof; provided that the amount invoiced represents Products and/or Services which have been accepted by the **State** and the form of the invoice is acceptable to the **State**. Uncontested amounts not paid by the **State** within forty-five (45) days shall bear interest on the unpaid balance beginning with the forty-sixth (46th) day, at a rate of one percent (1%) per month, until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which the **State** has delivered to **Contractor** notice of a good faith dispute. **Contractor** shall invoice the **State** separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the applicable interest rate.

8. Data and Document Deliverables

- 8.1 **Contractor** shall deliver, by the dates specified in **Exhibit A** (Statement of Work), the data and documents required therein. Unless otherwise specified, Software documentation delivered pursuant to this contract shall meet the following standards:
- (a) Documentation shall be in paper, human readable format, which clearly identifies the programming language and version used, and when different programming languages are incorporated, identifies the interfaces between codes programmed in different programming languages.
 - (b) Documentation shall contain source code in a paper, human readable format, which describes the program logic, relationship between any internal functions, and identifies the disk files that contain the various parts of the code.
 - (c) Detailed "commenting" of source code may be used to partially satisfy the documentation requirements, although documentation shall also include a flow chart which identifies the program flow between files and functions. Comments may be used to document internal flow control in functions.
 - (d) Files containing the source code shall be delivered, or may be left on the host machine so long as the files and their location are identified, and their significance to the program described, in

the documentation.

- (e) Documentation shall describe error messages and the location in the source code, by page, line number, or other suitable identifier, where the error message is generated.

8.2 Documentation shall be written so persons reasonably proficient in the use of the program language utilized can efficiently use the documentation to understand the program structure, iterative and other control techniques, and decipher error messages should they occur. **Contractor** warrants that the delivered Software shall be sufficiently descriptive to enable maintenance and modification thereof to permit change to addresses and telephone numbers in computer generated documentation, addition of fields to the database, revisions of report formats, including breakpoints, and summary computations,

9. Inspection and Acceptance

9.1 The **State** reserves the right to inspect Services and Products delivered under this contract at all reasonable times and places during the term of this contract, including any extensions. If any of the Services or Products does not conform to contract requirements, the **State** may require **Contractor** to promptly perform the Services or provide the Products again in conformity with contract requirements, at no additional cost to the **State**. When defects in the quality or quantity of Services and Products cannot be corrected by re-performance, the **State** may:

- (a) require **Contractor** to take necessary action to ensure that future performance conforms to the requirements of this contract; and
- (b) equitably reduce the payment due to **Contractor** to reflect the reduced value of the Services performed or Products delivered.

These remedies shall in no way limit the remedies available to the **State** in other provisions of this contract or otherwise available in equity or at law, all of which may be exercised by the **State**, at its option, in lieu of or in conjunction with the preceding measures. Furthermore, the reduction, delay or denial of payment hereunder shall not constitute a breach of contract or default by the **State**.

9.2 **Contractor** shall provide written notice to the **State** upon completion of any deliverables or other performance of services. The **State** shall have thirty (30) days from the date of receipt of such notice to provide **Contractor** with written notification of acceptance or rejection of such deliverable. Acceptance of any deliverable will occur at the **Contractor's** or the **State's** site, as applicable, using jointly prepared acceptance test procedures and test data. The **State** shall perform the acceptance test and may witness the acceptance test, or the **State** shall perform the acceptance test following problem determination, problem analysis and service request procedures provided by the **Contractor**.

10. Reporting

10.1 **Contractor** shall submit, on a monthly basis and upon termination or completion of work, a written progress report analyzing the performance under this contract and specifying progress made for each activity identified in **Contractor's** duties and obligations. Such written analysis shall be in accordance with the procedures developed and prescribed by the **State**. The preparation of reports in a timely manner shall be the responsibility of **Contractor** and failure to comply may result in the delay of payment of funds and/or termination of this contract. Required reports shall be submitted to the **State** not later than the end of each calendar month, or at such time as otherwise specified by the **State**. Notwithstanding anything herein to the contrary, including without limitation the priority provisions set forth in Section 38, specific reporting requirements set forth in Exhibit A (Statement of Work) or in other exhibits to this contract, shall take precedence over this general reporting provision.

10.2 **Contractor** shall provide the **State** with such documentation and other information as may be reasonably requested by the **State** from time to time to verify that **Contractor's** performance of Services is in compliance with the terms and conditions of this contract. **Contractor** shall provide the

State with project status reports and monthly reports on the progress of the work and system operations. The content and format of these reports shall determined by the **State**.

- 10.3 Project status reports shall include, without limitation, the following: (i) activities performed in the prior period; (ii) deliverables/milestones achieved; (iii) progress relative to project plan; (iv) key issues and factors impacting the support effort; (v) corrective actions, if needed; and (vi) planned activities for the upcoming period.
- 10.5 Monthly system operations reports will include, without limitation, the following: (i) usage by Service in the prior period; (ii) changes implemented in prior period; (iii) key issues surfaced through problem management reporting; (iv) corrective actions, if needed; (v) planned activities for the upcoming period; and (vi) resource deployment for prior, current and upcoming periods.

11. Rights in Data, Documents, and Computer Software

Work Product shall be the property of **Contractor** and **Contractor** licenses the use of Work Product to the State of Colorado for its use. **Contractor** reserves the right, power and privilege to provide the same or similar Work product to other political jurisdictions and entitles and receive separate compensation for such licenses.

12. Intellectual Property Escrow.

- 12.1 **Contractor** agrees to deposit the Software, Work Product, documentation, and/or other related material(s) with a software escrow agent for the term of the contract. "Software" as used in this Section includes the source code accompanied by a running object code version submitted on a virus-free magnetic or optical media, compiled and ready to be read by a computer. "Documentation" as used in this Section includes all materials sufficient for a trained computer programmer of general proficiency to maintain and support the Software without further assistance from **Contractor**. **Contractor** also shall have a continuing obligation to deposit any maintenance modifications, updates, upgrades, new releases, or documentation related to the deposited materials.
- 12.2 **Contractor** agrees to enter into an agreement with the escrow agent which will instruct the escrow agent to independently verify the operation of the running object code and cause delivery of the Software, Work Product, documentation, and all other related materials in the possession of the escrow agent to the **State** if any one of the following events occur:
- (a) **Contractor** agrees in writing to the delivery; or
 - (b) **Contractor** ceases to do business and no successor shall have agreed to assume the **Contractor's** obligations to the **State**; or
 - (c) **Contractor** fails to support the Software or has otherwise defaulted under this contract; or
 - (d) **Contractor** files for liquidation under the U.S. Bankruptcy Code, or files for reorganization under the U.S. Bankruptcy Code and does not remain debtor in possession.
- 12.3 **Contractor** shall grant the appropriate licensee rights to the escrow agent to allow the escrow agent to exercise the escrow agent's rights under the intellectual property escrow agreement.
- 12.4 **Contractor** agrees that if the escrow agent delivers the Software, Work Product, documentation, and other related materials in the possession of the escrow agent to the **State**, the **State** shall have the same license and rights to use such Software, Work Product, documentation, and other related materials as the **State** has under this contract, including the right to utilize the source code and create updates and derivative works consistent with the purposes of this contract.
- 12.5 All costs and fees associated with escrow agreement and this Section shall be the responsibility of **Contractor**.

13. Maintenance, Inspection and Monitoring of Records

- 13.1 **Contractor** shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of programs or the delivery of Services or Products under this contract, and shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending, or until an audit has been completed; provided, that if an audit by or on behalf of the Federal and/or Colorado State government has begun but is not completed or audit findings have not been resolved after a three (3) year period, such materials shall be retained until completion of the audit or resolution of the audit findings.
- 13.2 **Contractor** shall permit the State, the Federal Government or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe **Contractor's** records during the term of this contract and for a period of three (3) years following termination of this contract or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate **Contractor's** performance hereunder.
- 13.3 **Contractor** also shall permit these same described entities to monitor all activities conducted by **Contractor** pursuant to the terms of this contract. As the monitoring agency, in its sole discretion, may deem necessary or appropriate, such monitoring may consist of internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other reasonable procedure. All such monitoring shall be performed in a manner that will not unduly interfere with contract performance.

14. Confidentiality of State Records and Information

- 14.1 **Contractor** acknowledges that it may come into contact with confidential information in connection with this contract or in connection with the performance of its obligations under this contract, including but not limited, to personal records and information of individuals. It shall be the responsibility of **Contractor** to keep all State records and information confidential at all times and to comply with all Colorado State and Federal laws and regulations concerning the confidentiality of information to the same extent applicable to the State. Any request or demand for information in the possession of **Contractor** made by a third party who is not an authorized party to this contract shall be immediately forwarded to the State's principal representative for resolution.
- 14.2 **Contractor** shall notify all of its agents, employees, subcontractors and assigns who will come into contact with State information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of the requirements before they are permitted to access information or data. **Contractor** shall provide and maintain a secure environment that ensures confidentiality of all State records and information wherever located. No State information of any kind shall be distributed or sold to any third party or used by **Contractor** or its agents in any way, except as authorized by the contract and as approved by the State. State information shall not be retained in any files or otherwise by **Contractor** or its agents, except as set forth in this contract and approved by the State. Disclosure of State records or information may be cause for legal action against **Contractor** or its agents. Defense of any such action shall be the sole responsibility of **Contractor**.
- 14.3 If **Contractor** provides physical or logical storage, processing or transmission of confidential or sensitive State data, **Contractor** shall provide physical and logical protection for State hardware, Software, applications and data that meet or exceed industry standards and requirements as set forth in this Contract and exhibits attached hereto. **Contractor** shall provide the State with access, subject to **Contractor's** reasonable access security requirements, seven (7) days a week, 24 hours a day, for the purpose of inspecting and monitoring access and use of State data, maintaining State systems, and evaluating physical and logical security control effectiveness.
- 14.4 **Contractor** shall be responsible for the security of all information provided to it by the State. If **Contractor** becomes aware of a Breach of Data Security, it shall notify the State immediately and

cooperate with the **State** regarding recovery, remediation, and the necessity to involve law enforcement, if any. **Contractor** shall be responsible for the cost of notifying each Colorado resident and residents of other states whose personal information may have been compromised. Notice shall be made as soon as possible within the legitimate needs of law enforcement and according to the requirements of the **State**. **Contractor** shall be responsible for performing an analysis to determine the cause of the breach, and for producing a remediation plan to reduce the risk of incurring a similar type of breach in the future. **Contractor** shall present such analysis and remediation plan to the **State** within ten (10) days of notifying the **State** of the Breach of Data Security. The **State** reserves the right to adjust this plan, in its sole discretion. In the event that **Contractor** cannot produce the required analysis and plan within the allotted time, the **State**, in its sole discretion, may perform such analysis and produce a remediation plan, at the **Contractor's** cost.

14.5 Notwithstanding any other provision of this contract or its exhibits or attachments, **Contractor** shall be liable to the **State** for all consequential and incidental damages arising from a Breach of Data Security.

15. Litigation Reporting

Contractor, within ten (10) days after being served with a summons, complaint, or other pleading in a case which involves Services or Products provided or **Contractor's** performance under this contract, which has been filed in any Federal or state court or administrative agency, shall deliver copies of such document to the **State's** principal representative, or in absence of such designation, to the chief executive officer of the department, agency, or institution executing this contract on behalf of the **State**.

16. Conflict of Interest.

16.1 During the term of this contract, **Contractor** shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of **Contractor's** obligations under this contract.

16.2 Additionally, **Contractor** acknowledges that in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of the **State**. Thus, **Contractor** shall refrain from any practices, activities or relationships that could reasonably be considered to be in conflict with the full performance of **Contractor's** obligations to the **State** in accordance with the terms and conditions of this contract, without the prior written approval of the **State**.

16.3. In the event that **Contractor** is uncertain whether the appearance of a conflict of interest may reasonably exist, **Contractor** shall submit to the **State** a full disclosure statement setting forth the relevant details for the **State's** consideration and direction. Failure to promptly submit a disclosure statement or to follow the **State's** direction in regard to the apparent conflict shall be grounds for termination of the contract.

16.4. **Contractor** and subcontractors, permitted under the terms of this contract, shall maintain a written code of standards governing the performance of their respective employees engaged in the award and administration of contracts. No employee, officer or agent of **Contractor** or any permitted subcontractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (a) an employee, officer or agent;
 - (b) any member of the employee's immediate family;
 - (c) an employee's partner; or
 - (d) an organization, which employs, or is about to employ, any of the above,
- has a financial or other interest in the firm selected for award. **Contractor's** or subcontractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from **Contractor**, potential contractors, or parties to sub-agreements.

- 16.5. **Contractor's** right to license the same or related or similar Work Product to other political jurisdictions shall not be considered a conflict of interest provided that it does not interfere with **Contractor's** performance of its contract with **State** and provided that **State** is not also providing the same or similar or related Work product to the jurisdiction or entity concerned.

17. Warranties

Contractor warrants that in providing deliverables and performing Services pursuant to the terms of this contract:

- 17.1 **Contractor** warrants that (a) Services and/or Products provided under this contract shall meet the description in **Exhibit A** (Statement of Work), (b) there are no pending or threatened suits, claims, or actions of any type with respect to the Services or Products to be provided under this contract and (c) the Services and Products shall be free and clear of any liens, encumbrances, or claims arising by or through **Contractor** or any party related to **Contractor**.
- 17.2 **Contractor** shall strictly comply with the descriptions of and representations as to the Services (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) set forth in this contract and **Exhibit A** (Statement of Work). All Services under this contract shall be performed in a timely manner, in accordance with the specifications, and in a manner acceptable to the **State**. **Contractor** shall re-perform any Services that fail to satisfy this warranty.
- 17.3 In addition to any express and implied warranties provided to the **State** under law or made under other provisions of this contract, **Contractor** hereby expressly warrants that the Services to be performed hereunder shall be performed in a workmanlike manner, subject to the supervision and instructions provided by the **State**, and that all work performed pursuant to this contract shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time the Services are provided.
- 17.4 The Services performed by **Contractor** shall not be in violation of any applicable law, rule or regulation, and **Contractor** shall obtain all permits and licenses required to comply with such laws and regulations.
- 17.5 The Services shall not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any Intellectual Property rights.
- 17.6 **Contractor** is the lawful owner or licensee of all Software, hardware, methods, methodologies and any pre-existing intellectual property used in the performance of the Services and has the right to grant to the **State** access to or use of such Software, hardware, methods, methodologies and Intellectual Property.
- 17.7 All deliverables delivered under this contract by **Contractor** shall meet the specifications set forth in this contract and **Exhibit A** (Statement of Work) and shall interface, integrate and be functionally compatible with and perform on any and all of the **State's** hardware and Software configuration(s) as provided in the specifications. **Contractor** shall correct or replace any deliverables which fail to satisfy this warranty.
- 17.8 All Software and hardware deliverables and any update or revision to any of the Software and hardware deliverables shall be free from defects and shall meet all specifications set forth in this contract and any documents referenced therein. The deliverables, as defined in this contract, shall perform the functions substantially as described in this contract, for the term of this contract.
- 17.9 All Products furnished under this contract shall (i) conform to generally applicable standards in the industry, (ii) be new and in good working order, free from defects in materials or workmanship, (iii) installed properly and in accordance with manufacturers' recommendations or other industry standards and (iv) function in a failure-free manner. **Contractor** shall repair or replace, at the option of the **State**, any Products that fail to satisfy this warranty.

- 17.10 All equipment and supplies furnished under this contract shall be free from defects in materials or workmanship, be installed properly and in accordance with manufacturer's recommendations or other industry standards and function in a failure-free manner for a period of six (6) months from the date of installation by the **Contractor** and acceptance by the **State**.
- 17.11 **Contractor** shall correct any and all defects and make any additions, modifications or adjustments to any of the deliverables or any update or revision to any Software deliverables as may be necessary to keep the deliverables in operating order in accordance with specifications at all times during the applicable warranty period.
- 17.12 **Contractor** shall assign and deliver to the **State** all written manufacturer's warranties relating to the hardware.
- 17.13 The assignment of the Key Personnel to perform the Services shall be continuous throughout the term of this contract, except where such personnel are unable to perform, including but not limited to illness or termination of employment;
- 17.14 **Contractor** shall screen/perform criminal background checks on all **Contractor** employees supplied to the **State** to ensure that all such employees are fully qualified to perform the Services, and if required by law or ordinance, are validly licensed and/or have obtained all requisite permits to perform such Services for the **State**;

The foregoing warranties and such other warranties as may be set forth in this contract or in **Exhibit A** (Statement of Work) are part of the minimum work requirements of this contract and all performance or other actions or deliverables required by such warranties shall be performed or delivered at no additional cost to the **State**.

18. Licenses, Permits, and Responsibilities

Contractor certifies that, at the time of entering into this contract, it currently has in effect all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform the Services and/or deliver the Products covered by this contract. **Contractor** warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this contract, without reimbursement by the **State** or other adjustment in contract price. Additionally, all employees of **Contractor** performing Services under this contract shall hold the required licenses or certification, if any, to perform their responsibilities. **Contractor**, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for **Contractor** to properly perform this contract, shall be deemed to be a default by **Contractor** and grounds for termination of this contract by the **State**.

19. Tax Exempt Status

Contractor acknowledges that the State of Colorado is not liable for any sales, use, excise, property or other taxes imposed by any Federal, state or local government tax authority. The **State** also is not liable for any **Contractor** franchise or income related tax. No taxes of any kind shall be charged to the **State**.

20. Legal Authority

Contractor warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind **Contractor** to its terms. **Contractor** agrees it shall submit voluntarily to the personal jurisdiction of

the Federal and State courts in the State of Colorado and venue in the City and County of Denver, Colorado. The person(s) executing this contract on behalf of **Contractor** warrant(s) that such person(s) have full authorization to execute this contract.

21. Compliance with Applicable Law and State Policies

- 21.1 **Contractor** shall at all times during the performance of its obligations under this contract strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract.
- 21.1 **Contractor** shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable Federal and Colorado State laws, and their implementing regulations, as they currently exist and may hereafter be amended, which laws and regulations are incorporated herein by this reference as terms and conditions of this contract.
- 21.2 **Contractor** shall comply, and shall require its employees to comply, with all applicable **State** policies and standards in effect during the performance of this contract, including but not limited to **State** policies and standards relating to personnel conduct, security, safety, confidentiality and ethics. **Contractor** also shall require compliance with such policies and standards by subcontractors under subcontracts permitted under this contract.
- 21.3 Software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the United States of America ("USA") or other country. **Contractor** shall be responsible for complying with all export and re-export laws and regulations, including without limitation, (i) local license or permit requirements, (ii) export, import and customs laws and regulations (such as the export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the USA or any other country) which may apply to certain equipment, Software and technical data provided hereunder, and (iii) all applicable foreign corrupt practices acts.
- 21.4 The **Contractor** shall obtain and maintain, and shall cause its subcontractors to obtain and maintain all approvals, permissions, permits, licenses, and other forms of documentation required in order to comply with all applicable foreign or domestic laws, rules or regulations.
- 21.5 **Contractor** shall require compliance with the provisions of this Section 20 by all of **Contractor's** subcontractors performing work under subcontracts permitted under this contract.
- 21.6 The **Contractor** agrees that any failure by **Contractor**, **Contractor's** employees or **Contractor's** subcontractors to comply with any of the obligations of this Section may be treated by the **State** as a material breach of this contract by the **Contractor**.

22. Intellectual Property Indemnification

- 22.1 **Contractor** shall indemnify, hold harmless and defend, at **Contractor's** sole expense, the **State**, its employees and agents, against any and all loss, cost, expense or liability, including but not limited to attorney fees, court costs and other legal expenses and damages arising out of a claim that a Product, Service or any Work Product provided by **Contractor** under this contract, or its use, infringes a patent, copyright, trademark, trade secret or other intellectual property right. **Contractor's** obligation shall not extend to any combination of the Product with any other Product, system or method, unless the Product or system is:
- (a) provided by **Contractor** or **Contractor's** subsidiaries or affiliates;
 - (b) specified by the **Contractor** for work with the Product;
 - (c) reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - (d) reasonably expected to be used in combination with such other product, system or method.

- 22.2 The **State** shall notify **Contractor** within a reasonable time after receiving notice of a claim of infringement and **Contractor** shall have the sole authority to defend or settle such claim; provided that any settlement for be for money damages only. The **State** shall furnish, at the **Contractor's** reasonable request and expense, information and assistance necessary for the defense of such claim. **Contractor**, at its sole expense, shall (a) obtain the right for the **State** to continue using the Product, (b) replace the Product with a non-infringing Product with equivalent functionality, (c) modify the product so that it retains equivalent functionality, but is non-infringing or (d) reimburse the **State** for the removal and replacement of the Product.
- 22.3 **Contractor** shall consult the **State** regarding the defense of such claim and the **State**, at its discretion and expense, may participate in such defense. Should the **State** choose not to participate, **Contractor** shall keep the **State** advised of any settlement or defense. In the event **Contractor** shall fail to vigorously and timely pursue the defense or settlement of such claim, the **State** may assume such defense and settlement and **Contractor** shall be liable for all costs and expenses incurred by the **State** with respect thereto.

23. Remedies

In addition to any other remedies provided for in this contract, and without limiting the remedies otherwise available at law or in equity, the **State** may undertake the following remedial actions if **Contractor** substantially fails to satisfy or perform the duties and obligations in this contract. "Substantial failure" to satisfy duties and obligations shall be defined to mean material, insufficient, incorrect or improper performance, activities, or inaction by **Contractor**. These remedial actions are as follows:

- (a) Suspend **Contractor's** performance pending necessary corrective action as specified by the **State**, without **Contractor's** entitlement to adjustment in price/cost or schedule. Furthermore, at the **State's** option, a directive to suspend may include suspension of this entire contract or any particular part of this contract which the **State** determines in good faith would not be beneficial or in the **State's** best interests due to **Contractor's** substantial non-performance. Accordingly, the **State** shall not be liable to **Contractor** for costs incurred after the **State** has duly notified **Contractor** of the suspension of performance under this provision, and **Contractor** shall promptly cease performing and incurring costs in accordance with the **State's** directive;
- (b) Withhold payment to **Contractor** until the necessary Services or Products or corrections in performance, development or manufacture are satisfactorily completed;
- (c) Request the removal from work on this contract of employees or agents of **Contractor** identified by the **State**, in its reasonable judgment, as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this contract the **State** deems to be contrary to the public interest or not in the best interests of the **State**;
- (d) Deny payment for those Services or obligations which have not been performed and/or Products which have not been provided and which, due to circumstances caused by **Contractor**, cannot be performed, or if performed would be of no value to the **State**. Denial of the amount of payment must be reasonably related to the value of work or performance lost to the **State**; and/or
- (e) Terminate this contract for default.

Prior to exercising any of the described remedies, State shall notify **Contractor** of any defect, deficiency or default and provide **Contractor** with a reasonable period of time, not to exceed 30 days, to correct or cure or challenge the claim of a defect or deficiency.

The above remedies are cumulative and the **State**, in its sole discretion, may exercise any or all of them individually or simultaneously.

24. Termination for Public Interests

24.1 When the public interests of the **State** so require, the **State** may terminate this contract in whole or in part. The **State** shall give written notice of termination to **Contractor** specifying the termination of all or a portion of this contract and the effective date of such. Exercise by the **State** of this termination for public interests provision shall not be deemed a breach of contract by the **State**. Upon receipt of written notice, **Contractor** shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, **Contractor** shall stop work to the extent specified. **Contractor** also shall terminate outstanding orders and subcontracts as they relate to the terminated work. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by **Contractor** under this contract shall, at the option of the **State**, be delivered by **Contractor** to the **State** and shall become the **State's** property. The **State** may direct **Contractor** to assign **Contractor's** right, title, and interest under terminated orders or subcontracts to the **State**. **Contractor** shall complete and deliver to the **State** the work not terminated by the notice of termination and may incur obligations as are necessary to do so within the contract terms.

24.2 If this contract is terminated by the **State** as provided herein, **Contractor** shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the Products or deliverables satisfactorily delivered or installed bear to the total Services, Products or deliverables covered by this contract, less payments of compensation previously made. In addition, for contracts that are less than 60% completed, the **State** may reimburse the contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this contract) incurred by **Contractor** during the contract period which are directly attributable to the uncompleted portion of **Contractor's** obligations covered by this contract. In no event shall reimbursement under this clause exceed the contract amount. If this contract is terminated for cause, or due to the fault of the **Contractor**, the Termination for Cause or Default provision shall apply.

25. Termination for Default/Cause

If **Contractor** refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time and pursuant to the requirements and terms specified in this contract, the **State** may notify **Contractor** in writing of such non-performance. If **Contractor** fails to promptly correct such delay or non-performance within the time specified, the **State**, at its option, may terminate this entire contract or such part of this contract as to which there has been delay or a failure to properly perform. If terminated for cause, the **State** shall reimburse **Contractor** only for accepted work or deliverables received up to the date of termination and final payments may be withheld. In the event of termination, all finished or unfinished Work Product, documents, data, studies, research surveys, reports, other materials prepared by **Contractor**, or materials owned by the **State** in the possession of **Contractor**, at the option of the **State**, shall be returned immediately to the **State** or retained by the **State** as its property. At the **State's** option, **Contractor** shall continue performance of this contract to the extent not terminated, if any, and shall be liable for excess costs incurred by the **State** in procuring from third parties replacement services or substitute products as cover. Notwithstanding any remedial action by the **State**, **Contractor** also shall remain liable to the **State** for any damages sustained by the **State** by virtue of any breach by **Contractor** and the **State** may withhold any 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. Upon termination by the **State**, **Contractor** shall take timely, reasonable and necessary action to protect and preserve property in the possession of **Contractor** in which the **State** has an interest. Further, the **State** may withhold amounts due to **Contractor** as the **State** deems necessary to protect the **State** against loss because of outstanding liens or claims of former lien holders and to reimburse the **State** for the excess costs incurred in procuring similar products or services. Any action taken by the **State** hereunder or pursuant to Section 21 shall not be cause for **Contractor** to terminate this Contract for default or material breach. If, after termination by the **State**, it is determined for any reason that **Contractor** was

not in default or that **Contractor's** action/inaction was excusable, such termination shall be treated as a termination for public interests and the rights and obligations of the parties shall be the same as if this contract had been terminated for public interests, as described herein.

26. Insurance

26.1 The **Contractor** shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

- (a) Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.
- (b). Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - 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 one fire.

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

- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

26.2 The **State** of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the **State** of Colorado.

26.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the **State** by certified mail.

26.4 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

26.5 All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the **State**.

26.6 The **Contractor** shall provide certificates showing insurance coverage required by this contract to the **State** within seven (7) business days of the effective date of the contract, but in no event later than the commencement of the Services or delivery of the Products under this contract. No later than fifteen (15) days prior to the expiration date of any such coverage, **Contractor** shall deliver to the **State** certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the **State** may request in writing, and **Contractor** shall thereupon, within ten (10) days, supply to the **State** evidence satisfactory to the **State** of compliance with the provisions of this section.

26.7 Notwithstanding subsection (a) of this Section, if **Contractor** is a "public entity" within the meaning of the Colorado Governmental Immunity Act, sections 24-10-101, *et seq.*, C.R.S., as amended (the "Act"), **Contractor** shall at all times during the term of this contract maintain only such liability

insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the **State**, **Contractor** shall show proof of such insurance satisfactory to the **State**.

27. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, 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 Governmental Immunity Act. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the **State** of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of sections 24-10-101, *et seq.*, C.R.S., as now or hereafter amended and the risk management statutes, sections 24-30-1501, *et seq.*, C.R.S., as now or hereafter amended.

28. Force Majeure

Neither **Contractor** nor the **State** shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure." As used in this contract "force majeure" means acts of God; acts of the public enemy; acts of terrorism; public health/safety emergency acts of the **State** or any governmental entity in its sovereign capacity; fires; floods, epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

29. Representatives

Each individual identified below is the principal representative of the designating party. All notices required to be given to a party pursuant to this contract shall be hand delivered, with receipt required, or sent by certified or registered mail to such party's principal representative at the address for such party set forth below. Either party may from time to time designate by written notice to the other party substitute addresses or persons to whom such notices shall be sent.

For the State:

Name: Mike Coffman
Title: Secretary of State
Address: 1700 Broadway, Suite 250
Denver, CO 80290
Telephone: (303) 894-2200

With a Copy to:

Trevor Timmons,
Chief Information Officer
1700 Broadway, Suite 300
Denver, CO 80290

For Contractor:

Name: John Paulsen
Address: LEDS, LLC
3957 Lazy K Drive, #11
Castle Rock, CO 80204
Telephone: (303) 814-9043

30. Assignment and Successors

Contractor's rights and obligations under this contract shall be deemed to be personal and may not be transferred, assigned or subcontracted without the prior, written consent of the **State**, which shall not be unreasonably withheld. Any attempt at assignment, transfer or subcontracting without such consent

shall be void, except that **Contractor** may assign the right to receive payments from the **State** pursuant to section 4-9-318, C.R.S. All subcontracts and subcontractors consented to by the **State** shall be made subject to the requirements, terms and conditions of this contract. **Contractor** alone shall be responsible for all subcontracting arrangements, directions and delivery of subcontracted Work Product or Products, and performance of any subcontracted Services. **Contractor** shall require and ensure that each subcontractor shall assent in writing to all the terms and conditions of this contract, including an obligation of the subcontractor to indemnify the **State** as is required under Section 3 of the Colorado Special Provisions, incorporated as a part of this contract.

31. Third Party Beneficiaries

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement shall be strictly reserved to the **State** and **Contractor**. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the **State** and **Contractor** that any such person or entity, other than the **State** or **Contractor**, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

32. Severability

To the extent this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable. Should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

33. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

34. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the Colorado **State** Fiscal Rules.

35. Survival of Certain Contract Terms

Notwithstanding anything contained herein to the contrary, all terms and conditions of this contract, including but not limited to its exhibits and attachments, which may require continued performance, compliance, or effect beyond the termination date of this contract, shall survive such termination date and shall be enforceable by the **State** in the event of **Contractor's** failure to perform or comply as required.

36. Modification and Amendment

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

herein.

36.2 Except as specifically provided in this contract, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract, properly executed and approved in accordance with Colorado State law and State Fiscal Rules.

37. Disputes

In the event the parties are unable to resolve a dispute with respect to the performance of this contract, such dispute shall be submitted in writing to the **State's** named representative and **Contractor's** named representative for resolution under the dispute resolution process provided for in CRS 24-109-101 et. seq. Under this dispute resolution process, if the **State** and **Contractor** are unable to resolve the dispute to the satisfaction of both parties within thirty (30) days, either party may pursue any remedy available to it at law or in equity.

38. Venue

Venue for any action related to performance of this contract shall be in the City and County of Denver, Colorado.

39. Order of Precedence

The provisions of this contract shall govern the relationship of the **State** and **Contractor**. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- (a) Colorado Special Provisions, Page 18
- (b) Remaining pages of the contract, Pages 1 through 19
- (c) **Exhibit A**, Pages 20 through 21

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

1. **CONTROLLER'S APPROVAL.** CRS 24-30-202 (1). This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY.** CRS 24-30-202(5.5). Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

[Applicable Only to Intergovernmental Contracts] 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, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

4. **INDEPENDENT CONTRACTOR.** 4 CCR 801-2. 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 or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall 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 will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. *[Not Applicable to Intergovernmental Contracts]* **VENDOR OFFSET.** CRS 24-30-202 (1) and 24-30-202.4. The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has 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 paragraph, the State may exercise any remedy available at law or 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.

9. **EMPLOYEE FINANCIAL INTEREST.** CRS 24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

10. *[Not Applicable to Intergovernmental Contracts]*. **ILLEGAL ALIENS - PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS.** CRS 8-17.5-101 and 24-76.5-101. Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. 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 represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears or 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 CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

Revised October 25, 2006
2006

Effective Date of Special Provisions: August 7,

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:

LEDS, LLC
Legal Name of Contracting Entity
84-1485813
Social Security Number or FEIN

BILL RITTER, JR. GOVERNOR
William A. Holde
By MIKE COFFMAN, SECRETARY OF STATE
MIKE COFFMAN, Secretary of State
DEPUTY SECRETARY OF STATE
Department of State

Date 1/17/08

John L. Paulsen
Signature of Authorized Officer

John L. Paulsen, Pres
(Print) Name & Title of Authorized Officer

LEGAL REVIEW:
Attorney General, John W. Suthers
By N/N

Date _____

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER
Leslie M. Shenefelt

By Yvonne Anderson
Date 1/30/08

Statement of Work

Project Description: The Design and Development of the **Colorado Abstract**

Contractor

Contractor will design and develop a system for the collection of tabulated results of elections, review and validation of certified results by county election officials, and preparation of an official **Colorado Abstract** of election results.

Contractor will be responsible for performing the functions and activities necessary to provide the **State** with a print-ready abstract document, including the following:

- Developing a project plan and designing implementation process flows/procedures;
- Establishing Web Site Services and providing a URL address/SSL certificate;
- Identifying tabulation equipment and vendors;
- Developing electronic data import interface for each vendor;
- Developing a data base structure to store information, as well as data display and search forms;
- Collecting data from counties and input of data into the data base, as needed;
- Developing and testing equipment and user interfaces;
- Developing Microsoft Internet Explorer 5.0 and above browser-based program using ASP and/or Microsoft Visual Basic .NET program language;
- Developing and testing programs;
- Developing and providing education, training, customer support and help desk services for counties;
- Selecting 5 counties in which to pilot the program;
- Executing and validating pilot of system, including testing interfaces, data base, and WEB search; downloading candidate and voter registration information from the statewide voter registration system; and uploading votes cast by pilot counties, displaying pilot results, and producing reports on votes cast and ballot titles;
- Providing service to support all 64 counties in Colorado;
- Providing user and administrator training;
- Providing onsite and/or phone (Help Desk) support during and after implementation;
- Producing a print-ready Colorado Abstract document;
- Providing a close-out report and evaluation of project.

Deliverables:

Contractor will complete the following deliverables and submit them to the Department of State Elections Director or designee for acceptance as set forth in Section 9.2 of this contract.

| Deliverables | Timeline |
|--|---|
| Project status reports | Monthly |
| Design and Develop Software | 60 days after effective date of contract |
| Completion of system testing and user acceptance testing | 120 days after effective date of contract |
| Completion of training activities | 150 days after effective date of contract |
| Deployment of help desk structure | 180 days after effective date of contract |
| Open 800 number help desk and support line | 60 days prior to the primary election |
| Upload from counties election results | Within 60 days after the primary election |
| Open 800 number help desk and support line | 60 days prior to the general election |

Statement of Work

Project: Ballot Certification

Contractor

1. **Contractor** will incorporate technologies included in the Abstract Project to design and develop a computerized database application for the Department of State to use to track statewide ballot information, including issues and candidates, for both the primary and general elections in 2008.
2. **Contractor** will be responsible for performing the functions and activities necessary to provide the **State** with a program through a WEB application that will enable Department of State staff to add, modify and remove candidate filings to assure accuracies prior to certifying to any county the Federal and State ballot candidate and issues. Included in these activities will be user acceptance testing and training of Department of State staff on the use of the application.
3. **Contractor** will use the developed application and import current Department data on election races and candidates in order to provide the State with print-ready Ballot Certification documents specific to each of the 64 counties in the state prior to the **State's** statutory deadlines for Ballot Certification.
4. **Contractor** will provide to the **State**, one day before the **State's** statutory deadlines, the print-ready Ballot Certification documents. Should the **State** have to make corrections as indicated in Number 3 below, **Contractor** will provide the necessary print-ready corrected Ballot Certification documents.

State

1. The **State** will provide a project liaison to assist **Contractor** in the design, development, and testing of this project, as well as to provide administrative direction to each Colorado county as to the purpose of this project.
2. The **State** will provide to **Contractor** electronic data of current office and position holders, as well as election race detail of federal and state candidates and/or measures by county, district, race, and candidates for **Contractor** to import into the application.
3. Upon close of business two days prior to the statutory date of ballot certification, the **State** will have validated all race, candidate and/or measures to enable **Contractor** to provide the ballot certification documents. However, if due to circumstances beyond its control the **State** must make corrections, it may do so through the close of business on the deadline date of Ballot Certification.

Contractor Deliverables and Payment Schedule

| Deliverable | Date | Payment Amount |
|---|--------------------|-----------------------|
| Race and Candidate database and entry forms | April 25, 2008 | \$10,000.00 |
| Completion of system testing and user acceptance testing | May 7, 2008 | |
| Completion of training of staff | May 7, 2008 | \$7,500.00 |
| Ballot Certification print-ready documents for all 64 counties for Primary Election | June 12, 2008 | \$2,500.00 |
| Ballot Certification print-ready documents for all 64 counties for General Election | September 7, 2008 | \$2,500.00 |
| Status Reports | Monthly | |
| Close-out Report | September 12, 2008 | \$2,500.00 |

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|---|---|
| Upload from counties election results | Within 60 days after the general election |
| Assist the state and counties in validation of election results | February 1, 2009 |
| Colorado Abstract print-ready document | March 31, 2009 |
| Project Close-out Report | March 31, 2009 |

Payment Schedule:

The **State** will compensate **Contractor** an amount not to exceed \$84,900.00 (Eighty-four thousand nine hundred and 00/100 dollars) for successful completion of the project. Payments will be made in eight installments upon completion of the following milestones:

| <u>Milestone:</u> | <u>Payment Amount</u> |
|--|------------------------------|
| Customization activities: | |
| Delivery and acceptance of design and development of system software | \$29,938.00 |
| Completion of system testing and user acceptance testing | \$ 6,654.00 |
| Completion of training activities | \$ 6,654.00 |
| Deployment of help desk structure for counties | \$ 6,654.00 |
| Sub Total | \$49,900.00 |
| Production activities: | |
| Open 800 number help desk and support line | \$12,510.00 |
| Monitor and maintain servers starting election day | \$ 6,255.00 |
| Assist the state and counties in validation of election results | \$ 6,255.00 |
| Delivery and acceptance of Colorado Abstract print-ready document | \$ <u>9,980.00</u> |
| Sub Total | \$35,000.00 |
| Total | \$84,900.00 |

State

The **State** will provide a project liaison to assist the **Contractor** in the design, development, and testing of this project, as well as in giving administrative direction to each Colorado county regarding the purpose of this project and the legislative requirement of the **Abstract**.

The **State** will provide electronic data extracts from its statewide voter registration system as follows:

1. Upon completion of the ballot certification, election race detail of federal and state candidates and/or issues by county, district, precinct, race, and candidates;
2. Upon completion of the ballot certification, voter registration total by county, district, precinct, and party of active and inactive voters;
3. Upon close of business the day prior to an election, voter registration total by county, district, precinct, party of active and inactive voters;

Upon close of business the day prior to an election, the **State** will also validate race, candidate and/or issues and make any necessary corrections.

CONTRACT AMENDMENT # 1

THIS AMENDMENT, made this 8th day of April, 2008, by and between the State of Colorado for the use and benefit of the Department of State, 1700 Broadway, Suite 250, Denver, CO 80290, hereinafter referred to as the **State**, and LEDS, LLC, a Colorado Limited Liability Company, 3957 Lazy K Drive, #11, Castle Rock, CO 80104, hereinafter referred to as the **Contractor**.

FACTUAL RECITALS

Authority exists in the Law and Funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment; and

Required approval, clearance, and coordination has been accomplished from and with appropriate agencies; and

The parties entered into a contract dated January 30, 2008 for **Contractor** to design and develop a system for the collection of tabulated results of elections to provide the State with a print-ready election abstract document. The purpose for this amendment is described below.

Per Section 1-5-203, C.R.S., the State is required to deliver to the clerk and recorder of each county in the State a certificate electronically and in writing of the ballot order and content for each county for the primary and general elections of 2008. Prior to 2008, the **State** contracted with a vendor to develop the format of such ballot certifications; that vendor is no longer able to provide this service for the **State**.

Contractor has the capability, and is willing, to incorporate the technologies of the abstract project under this contract into a ballot certification application to enable the **State** to deliver ballot certifications to the counties to meet statutory requirements and deadlines.

NOW THEREFORE, it is hereby agreed that

1. Consideration for this amendment to the original contract, Contract Routing Number VAA0800004, Encumbrance Number POVAA08000000031, dated January 30, 2008, consists of the payments which shall be made pursuant to this amendment and the promises and agreements herein set forth.
2. It is expressly agreed by the parties that this amendment is supplemental to the original Contract, referred to as the "original contract," which is, by this reference incorporated herein, that all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this amendment as though they were expressly rewritten, incorporated, and included herein.
3. It is agreed the original contract is and shall be modified, altered, and changed in the following respects only:
 - a. Except as otherwise amended in Sections 4 and 17 below, all references in the original contract to **Section A** Statement of Work) shall be changed to **Sections A and A- 1** (Statements of Work).

- b. **Section 1. Definitions** of the original contract shall be amended by adding the following sub-section at the end of the section:

"1.11 **"Ballot Certification"** means an official certificate, available electronically and in writing, of the ballot order and content for each county to be used in a primary and/or general election as described in Section 1-5-203, C.R.S."

- c. **Section 4. Performance Term** of the original contract shall be amended by deleting sub-section 4.3 in its entirety and inserting the following in lieu thereof:

"4.3 In the event the **State** desires to continue the Services and/or Products as provided in **Exhibit A** (Statement of Work) through a replacement contract or amendment to the existing contract, compensation to the **Contractor** for the first additional year shall be at a base rate of \$38,150.00 (Thirty-eight thousand one hundred fifty and 00/100 dollars); subsequent years shall be compensated at the base rate compounded annually at the rate of nine percent (9%). In the event the **State** desires to continue the Services and/or Products as provided in **Exhibit A-1** (Statement of Work) beyond the term of this contract, compensation to the **Contractor** for the first additional year for maintenance and provision of the services and/or products shall be at a base rate of \$8,000.00 (Eight thousand and 00/100 dollars); subsequent years shall be compensated at the base rate compounded annually at the rate of nine percent (9%)."

- d. **Section 5. Compensation** of the original contract shall be amended by deleting sub-section 5.1 in its entirety and inserting the following in lieu thereof:

"5.1 Payment of compensation for the performance of the Services and delivery of Products required by this contract and **Exhibits A and A-1** (Statements of Work) shall be made as earned, in whole or in part, from available **State** funds encumbered for such purposes, in a maximum amount not to exceed **\$109,900 (One hundred nine thousand nine hundred and no/100 dollars)**. Satisfactory performance and/or delivery under the terms of this contract shall be a condition precedent to the **State's** obligation to compensate **Contractor.**"

- e. **Section 39. Order of Precedence** of the original contract shall be amended by deleting (c) Exhibit A, Pages 20 through 21 and inserting the following in lieu thereof:

"(c) Exhibits A and A-1"

4. The effective date of this amendment is upon approval of the State Controller or April 8, 2008, whichever is later.
5. 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 original contract, the provisions of this amendment shall in all respects supersede, govern, and control. The "Special Provisions" shall always be controlling over other provisions in the contract or amendments. The representations in the Special Provisions concerning the absence of bribery or corrupt influences and personal interest of State employees are presently reaffirmed.
6. FINANCIAL OBLIGATIONS OF THE STATE PAYABLE AFTER THE CURRENT FISCAL YEAR ARE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, AND OTHERWISE MADE AVAILABLE.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect and accept personal responsibility for any and all damages the State may incur for any errors in such representation.

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| <p>CONTRACTOR: LEDS, LLC Name: John L. Paulsen Title: President</p> <p><i>John L. Paulsen</i> *Signature</p> <p>Date: <u>4/8/08</u></p> <p>Name: Title:</p> <p>*Signature</p> <p>Date: _____</p> | <p>STATE OF COLORADO Bill Ritter Jr., GOVERNOR</p> <p>By: <i>Jacqueline Ponder, CAO</i> Jacqueline Ponder, Chief Admin. Officer</p> <p>Date: <u>4-8-08</u> Department of State</p> <p>LEGAL REVIEW:</p> <p>By: <u>N/N</u> John W. Suthers, Attorney General</p> <p>Date: _____</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.

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| <p>STATE CONTROLLER David J. McDermott, CPA</p> <p>By: <i>Yvonne Anderson</i> <input type="checkbox"/> Kevin Edwards <input checked="" type="checkbox"/> Yvonne Anderson <input type="checkbox"/> Robert Jaros</p> <p>Date: <u>4/14/08</u></p> |
|---|