

PURCHASING AUTHORITY DELEGATION AGREEMENT

THIS PURCHASING AUTHORITY DELEGATION AGREEMENT (this "Agreement") is entered into by and between the Colorado Department of Personnel & Administration (the "DPA"), acting through the State Purchasing Office ("Purchasing"), and the Colorado Department of Transportation ("CDOT"). For purposes of this Agreement, the State of Colorado may be referred to as the "State."

RECITALS

- A. DPA is the State agency responsible for the statewide implementation of specified purchasing functions as set forth in the Colorado Procurement Code (C.R.S. §§ 24-101-101 through 24-112-101, the "Code"), its implementing regulations, the Colorado Procurement Rules (1 CCR 101-9, the "Rules"), and the Policies of the Office of the State Controller (the "Policies" of the "OSC").
- B. The Code authorizes the Executive Director of DPA to create purchasing agencies whereby specified purchasing functions are delegated to State departments, agencies, or officials under the Code, Rules, and Policies, subject to the supervision and control of DPA.
- C. CDOT has requested authority to operate as a purchasing agency.
- D. The parties desire by this Agreement that the Executive Director of DPA shall confer upon CDOT a purchasing agency, and that CDOT shall accept the purchasing agency subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchasing and CDOT agree as follows:

- 1. **TERM OF AGREEMENT.** This Agreement shall be effective upon signature by both parties, and shall continue perpetually unless modified or terminated in accordance with its terms.
- 2. **AUTHORITY.** The authority for this Agreement resides in C.R.S. § 24-102-302 as amended. This Agreement shall be automatically amended to conform to applicable changes in law, regulation and policy.
- 3. **SCOPE OF DELEGATION.** CDOT shall conduct procurements in accordance with the Code, Rules, Policies, and terms and conditions of this Agreement. CDOT requests to be designated as a Group I or Group II delegated purchasing agency (as defined below) by checking one of the following boxes:

- GROUP I DELEGATED PURCHASING AGENCY.** As a Group I delegated purchasing agency, CDOT shall be authorized to conduct: (i) small purchases, (ii) procurements pursuant to price agreements, (iii) documented quotes, and (iv) invitations for bids; and shall be authorized to issue (v) requests for information, and (vi) purchase orders, all as such terms are defined in and limited by the Code, Rules, and Policies, as may be amended from time to time. A Group I delegated purchasing agency does not confer on CDOT authorization to conduct requests for proposals, sole source procurements, competitive negotiations, emergency procurements, or responses to bid protests unless otherwise approved in writing by Purchasing.

- GROUP II DELEGATED PURCHASING AGENCY.** As a Group II delegated purchasing agency, CDOT shall be authorized to conduct: (i) small purchases, (ii) procurements pursuant to price agreements, (iii) documented quotes, (iv) invitations for bids, (v) requests for proposals, (vi) sole source procurements, (vii) competitive negotiations, and (viii) emergency procurements; shall be authorized to issue (ix) requests for information, and (x) purchase orders; and shall be responsible for responding to bid protests, all as such terms are defined in and limited by the Code, Rules, and Policies, as may be amended from time to time.

The foregoing classification of purchasing agencies is subject to amendment by DPA in its discretion.

4. ORGANIZATIONAL STRUCTURE AND STAFFING.

- (i) CDOT shall identify an individual who shall serve as its procurement official (the "Procurement Official"). The Procurement Official shall be responsible for the implementation of this Agreement on behalf of CDOT. CDOT shall ensure that its Procurement Official has received sufficient training to conduct and manage CDOT's procurement activities pursuant to Section R-24-102-204-02 of the Rules, as may be amended, and to train and manage any staff authorized through subdelegation, as provided in Section 4.(iv), below, to perform purchasing functions under this Agreement. CDOT designates as its Procurement Official the individual who executed this Agreement as "Procurement Official". The Procurement Official, by executing this Agreement, acknowledges and assents to this Agreement's terms. The authority conferred upon the Procurement Official to engage in procurement activities under this Agreement shall exist only in connection with the purchasing agency conferred to CDOT by this Agreement and no other purchasing agency. The Procurement Official shall cease to be Procurement Official automatically upon cessation of the Procurement Official's employment with CDOT, unless such appointment has otherwise been terminated or withdrawn.
- (ii) CDOT shall, upon the Procurement Official position becoming vacant, promptly provide written notification to the State Purchasing Director of such fact, and name a replacement by completion and submission to Purchasing of a Notice of Substitution of Procurement Official attached to this Agreement as Addendum A. In the absence of such notification, the Executive Director of the Department or Elected Official, deputy, or chief of staff, as the case may be, shall assume all duties and responsibilities of the Procurement Official, until such time as a replacement is named. Each notification of Procurement Official substitution shall amend this agreement.
- (iii) CDOT shall maintain its purchasing functions under this Agreement separately from its accounting functions.
- (iv) The Procurement Official may further delegate his or her activities under this Agreement, except that the Procurement Official shall at all times serve as the principal contact with Purchasing and vendors, and be responsible for the training, supervision and control of all subdelegates and their procurement activities including, without limitation, CDOT's compliance with the terms of this Agreement. The Procurement Official's delegation of activities to each subdelegate performing procurement activities shall be memorialized in a subdelegation agreement to be executed by and between the Procurement Official and the subdelegate. Each such agreement shall include, without limitation (a) the subdelegate's acknowledgement of and assent to the terms of this Agreement, (b) a statement of the subdelegate's training received pursuant to Section R-24-102-204-02 of the Rules, as may be amended, (c) the subdelegate's acknowledgement of the completion of his or her training, and (d) the subdelegate's commitment to maintaining throughout the term of his or her subdelegation all training standards. The Procurement Official shall maintain a current list of all persons to whom the Procurement Official has delegated

activities under this Agreement, and shall provide a copy of the list to Purchasing upon request. The authority conferred upon a subdelegate to engage in procurement activities under a subdelegation agreement shall exist only in connection with the purchasing agency conferred to CDOT by this Agreement and no other purchasing agency. The subdelegation shall not be transferrable, and shall expire automatically upon the subdelegate's cessation of employment with CDOT, unless the subdelegation has otherwise been terminated or withdrawn.

- (v) CDOT acknowledges that any public employee who purchases goods or services contrary to the Code and Rules may be personally liable for the costs of the purchase under C.R.S. § 24-109-404.

5. ELECTED OFFICIALS. The terms and conditions of this Section shall, in addition to all other terms and conditions of this Agreement, apply to Elected Officials operating as purchasing agencies:

- (i) Nothing in this Agreement shall be interpreted as limiting any right of the Governor, Lieutenant Governor, Treasurer, Attorney General, or Secretary of State (an "Elected Official") under C.R.S. §§ 24-101-105 and 24-101-301 to enter into a procurement transaction that is not subject to the Code, Rules, Policies, or this Agreement. By entering into this Agreement, however, such Elected Official agrees that any and all of its procurement activities shall be subject to the Code, Rules, Policies, and this Agreement unless the Elected Official elects to completely exempt a transaction from their application.
- (ii) In the event an Elected Official elects to exempt a transaction from the application of the Code, Rules, Policies, and this Agreement, the Procurement Official shall be prohibited from signing any documents in connection with the transaction. The authority conferred by this Agreement onto Procurement Officials to sign documents in connection with procurement activities extends only to activities subject to the Code, Rules, Policies, and this Agreement. The authority to sign documents in connection with an exempt transaction extends only to the Elected Official and the Elected Official's immediate deputy or chief of staff as the case may be.
- (iii) The Elected Official, deputy or chief of staff, as the case may be, acknowledges that he or she may be personally liable for any claims arising in connection with a transaction exempted from the Code and Rules that exceeds the scope of his or her authority.
- (iv) Any and all records under Section 10 required to be maintained in connection with the purchasing agency conferred by this Agreement shall be maintained by CDOT separately from any records generated or used in connection with exempt transactions.

6. ACCEPTANCE AND ASSURANCES. CDOT accepts the delegation of purchasing agency conferred on it by this Agreement, and agrees to:

- (i) Subject its Procurement Official and all staff involved in activities conducted pursuant to this Agreement to the supervision and control of Purchasing, as provided in C.R.S. § 24-102-302;
- (ii) Accept responsibility for ensuring that all requirements of Colorado law are met including, without limitation, the Code, Rules, Policies, and this Agreement;
- (iii) Conduct all procurement activities for the purpose of purchasing goods and services for CDOT only, except as otherwise authorized by this Agreement or as authorized in writing by Purchasing;


- (iv) Assume all expenses involved in conducting its procurement activities;
 - (v) Maintain, at a minimum, those records specified in Section 10.
 - (vi) Report to Purchasing any material failures of CDOT to comply with the Code, Rules, and Policies.
 - (vii) Procure goods and services from State mandatory price agreements, as such mandatory price agreements are made available by Purchasing.
7. **PURCHASING'S RESPONSIBILITIES.** Purchasing shall (i) provide training, monitoring, guidance, support and assistance to CDOT upon request or as deemed appropriate by Purchasing; (ii) encourage procurement process improvements, and (iii) manage appeals from protest determinations. In connection with statewide procurements, Purchasing shall (iv) coordinate with CDOT to determine those goods and services for which CDOT has statewide needs; (v) review, approve and issue price agreements; and (vi) post price agreements on a web page. In connection with Group I purchasing agencies, Purchasing shall, in addition, be responsible for (vii) conducting procurement activities under any method not enumerated to Group I purchasing agencies in Section 3, and (viii) responding to protests. Purchasing shall provide copies on its website or DPA's website of the Colorado Procurement Code, the Colorado Procurement Rules, the Colorado Procurement Code of Ethics and Guidelines, the Colorado Fiscal Rules, and copies of policies and directives issued by DPA and Purchasing.
8. **PROCUREMENT ADVISORY COUNCIL.** CDOT appoints the Procurement Official as its representative on the Procurement Advisory Council. The Procurement Official shall attend and participate as an active member of the Procurement Advisory Council. Such participation shall include, but not be limited to, subcommittee participation.
9. **VENDOR PREFERENCES.** CDOT shall support State goals regarding purchases from small businesses; businesses owned by minorities, women, and other disadvantaged groups; and businesses that further sound environmental practices, as such goals are stated in State law, policies and orders. State agencies and departments are encouraged, to the greatest extent possible without sacrificing competition, to ensure active participation by such businesses, and to seek new sources of goods and supplies from them.
10. **RECORDS.** CDOT shall maintain a complete file of all documents, communications, and other materials used or generated in connection with the delegated purchasing activities covered by this Agreement. Such files shall include, but not be limited to, requisitions, solicitations, sole source and emergency procurement justifications, records of bids submitted, copies of purchase orders and contracts, and all relevant correspondence and notes. Such records shall be maintained by CDOT in accordance with applicable State Archives' Document Retention policies, for such further period as may be necessary to resolve any matters that may be pending, and, if requested by DPA, until a Purchasing review has been completed. CDOT shall maintain a copy of the Colorado Procurement Code, the Colorado Procurement Rules, the Colorado Procurement Code of Ethics and Guidelines, the Colorado Fiscal Rules, and copies of policies and directives issued by DPA and Purchasing.
11. **MONITORING AND OVERSIGHT.** CDOT shall permit Purchasing to monitor CDOT's activities conducted pursuant to this Agreement, as Purchasing may, in its discretion determine. Such monitoring may consist of peer reviews, internal evaluation procedures, examination of data, special analyses, on-site checking, formal audit examinations, and any other procedure as determined by DPA. In addition, CDOT shall be subject to audit by the Office of the State Auditor.

12. **NOTICES.** Any notices required or permitted to be given under this Agreement shall be given in writing and shall be delivered (i) in person, (ii) by Colorado inter-office mail, (iii) by US Mail, or (iv) by email, and such notices shall be addressed to their recipient as stated on the signatory page of this Agreement. Either party may change its address for receiving notices by notice delivered in accordance with this Section.
13. **LITIGATION.** CDOT shall notify Purchasing of any litigation, protest or other challenge that relates to its delegated purchasing activities under this Agreement. The Purchasing Official shall immediately forward to Purchasing copies of any complaint or other document submitted in connection with such litigation, protest or challenge. If the purchasing agency conferred by this Agreement is a Group II purchasing agency, CDOT shall, in addition, respond to any protest in compliance with the Code, Rules, and Policies.
14. **REMEDIES.** DPA may, in DPA's sole and absolute discretion, suspend the authority delegated by this Agreement. In addition, DPA may exercise the following remedial actions (i) issue a verbal and/or written warning identifying the failure and directing remedial action; (ii) request the removal from specified purchasing activities of the employee(s) whose actions DPA deems contrary to the terms of this Agreement, contrary to the public interest, or not in the best interest of the State; (iii) unilaterally modify any provision of this Agreement.
15. **TERMINATION.** Either party may terminate this Agreement at any time for any reason by giving the other thirty (30) days notice to terminate. DPA may terminate any part of this Agreement at any time for any reason upon notice to CDOT stating the provision terminated and the effective date of the termination. In the event of termination, all financial and staff resources dedicated to purchasing functions of CDOT shall be under the sole authority of Purchasing, except that CDOT's right to make purchases with a procurement card issued pursuant to Fiscal Rule 2-10 shall remain unaffected by such termination.
16. **SEVERABILITY.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
17. **WAIVER.** A party's failure to exercise or delay in exercising any right, power or privilege under this Agreement shall not operate as a waiver; nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof.
18. **COMPLETE AGREEMENT.** This Agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this Agreement. The Agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in the Agreement, whether oral or written.
19. **MODIFICATION.** This Agreement may be supplemented, amended, or modified by Purchasing upon notice to CDOT.
20. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. This Agreement or any counterpart may be executed and delivered by email or facsimile with scan attachment copies, each of which shall be deemed an original.
21. **AUTHORITY.** Each person signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver the Agreement. Each party represents and warrants to the other that the

execution and delivery of the Agreement and the performance of such party's obligations have been duly authorized and that the Agreement is a binding agreement enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed on the day and year written below.


CDOT:
Colorado Department of Transportation



Shailen Bhatt, Executive Director

4/6/17
Date


DPA:
Department of Personnel &
Administration



Cindy Lombardi, CPPB
State Purchasing & Contracts Director

4/6/17
Date
Address for notices
1525 Sherman Street, 3rd Fl.
Denver, Colorado 80203
cindy.lombardi@state.co.us

Procurement Official



Colette L DeSonier

3.29.17
Date
Address for Notices
4201 E Arkansas Ave. Suite 200
Denver, CO 80222
colette.desonier@state.co.us