

**STATE OF COLORADO
OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAMS**



**CONSULTANT AGREEMENT
STANDARD FORMAT
(STATE FORM SC-5.3)**

CONTRACT ROUTING NO.:	<u>N/A</u>
AGENCY IDENTIFICATION NO.:	<u>GFC</u>
PROJECT NO.:	<u>08-158</u>
PROJECT NAME:	<u>Historic Assessment and Master Plan: Heller Property</u>

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**CONSULTANT AGREEMENT
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(STATE FORM 6-AC-02-A)**

Agency I.D. Number: GFC Agreement Routing No.: N/A Project No. 08-158

THIS AGREEMENT made this _____ day of _____, in the year _____ by and between the **Regents of the University of Colorado**, a body corporate, acting by and through the **University Of Colorado At Colorado Springs** hereinafter called the Principal Representative, and _____ referred to as the Consultant.

WHEREAS, 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 in Fund Number _____, Account Number _____, Agreement Encumbrance Number _____; and

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

WHEREAS, the Principal Representative intends to obtain a Historic Assessment and Master Plan for the Heller Property.

hereinafter called the Project; and

WHEREAS, the Consultant was selected and determined to be the most qualified, and fees negotiated in accordance with the provisions of Section 24-30-1401, C.R.S. as amended.

NOW THEREFORE, it is hereby agreed that

ARTICLE 1. SCOPE OF WORK

The Consultant, in consideration of State's promises hereinafter made, promises to perform and accomplish all the work and services proposed, and in accordance with the terms and conditions set forth in the scope of work description and proposal dated _____, which documents are attached hereto and made a part hereof by reference as **Exhibit A**, (including the Design Services Schedule). Consultant shall undertake and perform the necessary work and services (as detailed in the Design Services Schedule outlining the required time to perform such work and services and including Principal Representative review times) as is customarily done in the professional practice of Architecture/Engineering/Consulting in the community for undertakings of similar character, scope and magnitude.

ARTICLE 2. COMPENSATION

In consideration for the performance of the said work and services, Principal Representative agrees to pay to Consultant fees and charges not to exceed _____ (\$_____). The total fees and expenses shall be payable upon

completion of the work and services and acceptance by the Principal Representative. Payment shall be made against Application for Payment (State Form SC-7.1).

ARTICLE 3. CONSULTANT CERTIFICATION

In accordance with Section 24-30-1404(1), C.R.S., the Consultant has executed a certificate, which is attached hereto and made a part hereof by reference as **Exhibit C**, stating that wage rates (**Exhibit B**), and other factual unit costs supporting the compensation paid by the State for these professional services are accurate, complete, and current. The original Agreement price and any additions thereto shall be adjusted to exclude any significant sums by which the State determines the Agreement price has been increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of this Agreement.

ARTICLE 4. AGREEMENT EXPIRATION

Unless sooner terminated, this Agreement shall remain in effect until the work and services are completed and accepted by the Principal Representative.

ARTICLE 5. CONTINGENT FEE PROHIBITION

In accordance with Section 24-30-1404(4), C.R.S., the Consultant warrants that he has not employed or retained any company or person other than a bona fide employee working solely for him, to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from the award or the making of this Agreement. For breach or violation of this warranty, the State shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price, or otherwise recover the full amount of such fee, commission, percentage, or consideration.

ARTICLE 6. TERMINATION OF AGREEMENT

Any breach of the terms and conditions of the Agreement by the Consultant shall, unless waived by the Principal Representative in writing, constitute a default by the Consultant hereunder and the Principal Representative shall thereafter have no obligation to the Consultant, and may select any of the remedies available to the Principal Representative under law. In the event of default by the Consultant, the Agreement may be terminated upon seven (7) days written notice to the Consultant by the Principal Representative with copies filed with the State Controller.

ARTICLE 7. CONSULTANT'S ACCOUNTING RECORDS

Records of the Consultant's Direct Personnel, Consultant, and Reimbursable Expense pertaining to this Agreement and records of accounts between the Principal Representative and Consultant shall be kept on a generally recognized accounting basis and shall be available to the Principal Representative at mutually convenient times and extending to three (3) years after final payment under this Agreement.

ARTICLE 8. ASSIGNMENT OF AGREEMENT NOT PERMITTED

The Consultant may not assign its performance of this Agreement or any part thereof without the prior written consent of the Principal Representative, but the Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Agreement.

ARTICLE 9. INTEGRATION OF UNDERSTANDING

This Agreement is intended as the complete integration of all understandings between the parties. No period 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 written Agreement executed and approved by the Principal Representative, State Buildings and Real Estate Programs, and the State Controller.

ARTICLE 10. BENEFITS ACCRUING TO OTHER STATE EMPLOYEES OR OFFICERS

It is understood and agreed that no benefits, payments or considerations received by Consultant for the performance of services associated and pertinent to this Agreement shall accrue, directly or indirectly, to any employee, or employees, elected or appointed officers or representatives, or by any other person or persons identified as agents of, or who are by definition, public servants of the State of Colorado.

ARTICLE 11. INCORPORATION OF OTHER DOCUMENTS

The Principal Representative and Consultant understand and agree the attachments and exhibits hereto are and shall be integral parts of this Agreement and the terms and provisions thereof are hereby incorporated, made a part of and shall supplement those recited herein. In the event of any conflict, or variance, the terms and provisions of this printed Agreement shall supersede, govern and control.

ARTICLE 12. WORK PRIOR TO EXECUTION OF AGREEMENT

Work or services performed, or expenses incurred prior to the execution of this Contract (State Controller approval) or any subsequent Supplement or Amendment, without the prior written consent of the State Controller, SHALL NOT be reimbursable under the terms and conditions of this contract. This is in accordance with the provisions of Section 24-30-202(3), C.R.S as amended.

ARTICLE 13. INSURANCE

13.1 COMMERCIAL GENERAL LIABILITY

13.1.1 It is agreed and understood Consultant shall maintain in full force and effect adequate commercial general liability insurance and property damage insurance, as well as workmen's compensation and employer's liability insurance pursuant to the State insurance requirements as defined below:

- .1** The Consultant shall obtain, and maintain at all times during the term of this Agreement, insurance in the following kinds and amounts:
 - .a** Workers' Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of contractor's employees acting within the course and scope of their employment.
 - .b** Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, independent

contractors, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

.1 \$1,000,000 each occurrence;

.2 \$1,000,000 general aggregate.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Consultant 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.
- .2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies. Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.
- .3 The insurance shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to the State by certified mail.
- .4 The Consultant will require all insurance policies in any way related to this Agreement and secured and maintained by the Consultant 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.
- .5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.
- .6 Consultant shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of the Services contemplated in this Agreement provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of Consultant, any Sub Consultant or associate thereof, or anyone directly or indirectly employed by Consultant. Consultant shall submit a Certificate of Insurance at the signing of the Work Authorization and also any notices of Renewal of said Policy as they occur.

ARTICLE 14. SPECIAL PROVISIONS

- A. **CONTROLLER'S APPROVAL CRS 24-30-202(1)**
This Contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.
- B. **FUND AVAILABILITY CRS 24-30-202(5.5)**
Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- C. To the extent authorized by law, the Consultant 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's fees, to the extent such claims are caused by any negligent act or omission of, or breach of contract by, the Consultant, its employees, agents, subcontractors or assignees pursuant to the terms of this contract, but not to the extent such claims are caused by any act or omission of, or breach of contract by, the State, its employees, agents, other contractors or assignees, or other parties not under the control of or responsible to the Consultant.

D. INDEPENDENT CONTRACTOR 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE 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 TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR 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 AGREEMENTS, 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 THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

E. NON-DISCRIMINATION

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

F. CHOICE OF LAW; NO ARBITRATION

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 without application of any choice of law rules that would apply the laws of any other state. 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 or otherwise which purports to negate this prohibition regarding arbitration, or any other provision required by the Fiscal Rules of the State of Colorado 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 the Contract to the extent that the Contract is capable of execution.

G. VENDOR OFFSET SYSTEM CRS 24-30-202(1) & CRS 24-30-202.4

Pursuant to C.R.S § 24-30-202.4, (as amended), the State Controller may withhold 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, C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be

owing as a result of final agency determination or reduced to judgment as certified by the State Controller.

H. EMPLOYEE FINANCIAL INTEREST CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

I. SOFTWARE PIRACY PROHIBITION

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 United States copyright laws or applicable licensing restrictions. The contractor hereby certifies that, for the term of this contract and any extensions, the contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the state determines that the 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 the contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

J. Unauthorized Immigrants

PUBLIC CONTRACTS FOR SERVICES - CRS 8-17.5-101 and 24-76.5-101. The Contractor certifies that the Contractor shall comply with the provisions of CRS 8-17.5-101 et seq. The Contractor shall not knowingly employ or contract with unauthorized immigrants to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with unauthorized immigrants to perform work under this contract. The Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any unauthorized immigrants, through participation in the E-Verify Program, formerly referred to as the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise will comply with the requirements of CRS 8-17.5-102(b). The 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. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate this contract for breach and the Contractor shall be liable for actual and consequential damages to the State.

A Contractor that operates as a sole proprietor hereby swears or affirms under penalty of perjury that the Contractor (i) is a citizen of the United States 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 of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Contract. Except where exempted by federal law and except as provided in CRS 24-76.5-103(3), a Contractor that receives federal or state funds under this contract must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS 24-76.5-103(4) if such individual applies for public benefits provided under this contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in original and three counterparts at Colorado Springs, Colorado the _____ day of _____, 2008

The Regents of the University of Colorado, a body corporate, acting by and through, the **University of Colorado at Colorado Springs**:

By _____
Pam Shockley-Zalabak
Principal Representative

THE CONSULTANT

CORPORATIONS:
(A corporate attestation is required)
ATTEST (Seal) By

(Corporate Secretary or Equivalent, or
Town/City/County Clerk)

(place corporate seal here, if available)

Legal Name of Contracting Entity

Signature

By _____
Name (print) Title

Address

City, State, Zip

SIGNATURES:

If the Consultant is doing business as a Corporation, the Agreement shall be signed by an officer i.e., President or Vice-President. The signature of the officer signing shall be attested to by the Secretary and properly sealed if corporate seal is available. If the Consultant is a sole proprietorship or a partnership, the Agreement shall so indicate and be properly signed. **Principal is not a recognized title and will not be accepted.**

APPROVALS

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 good and/or services provided.

APPROVED:
DEPARTMENT OF PERSONNEL & ADMINISTRATION
STATE BUILDINGS PROGRAMS
State Architect (or authorized Delegate)

APPROVED:
STATE OF COLORADO
STATE CONTROLLER'S OFFICE
State Controller (or authorized Delegate)

By: _____ Date: _____
Gary L. Reynolds, P.E., Delegee

By: _____ Date: _____
Julie G. Brewster, Delegee

CONSULTANT AGREEMENT
STANDARD FORMAT
(STATE FORM SC-5.3)

EXHIBIT A

CONSULTANT PROPOSAL
(including Design Services Schedule and Insurance Certificate, attached)

CONSULTANT AGREEMENT
STANDARD FORMAT
(STATE FORM SC-5.3)

EXHIBIT B

WAGE RATES
(attached)

**CONSULTANT AGREEMENT
STANDARD FORMAT
(STATE FORM SC-5.3)**

EXHIBIT C

CONSULTANT CERTIFICATION

I hereby certify:

- a. That I am the _____ and duly authorized representative of the firm of:

_____ ;
and

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

Signature

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EXHIBIT D

**MINORITY AND WOMEN BUSINESS ENTERPRISES PARTICIPATION REPORT
(MWBE-1)**

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EXHIBIT E

CERTIFICATION AND AFFIDAVIT REGARDING UNAUTHORIZED IMMIGRANTS (required at contract signing prior to commencing work)