

RESOLUTION NO. 92-19

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT BETWEEN THE CITY OF COLORADO SPRINGS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR MAINTAINING TRAFFIC SIGNALS ON STATE OWNED FACILITIES

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. That the Mayor is hereby authorized to execute a contract between the City of Colorado Springs and the Colorado Department of Transportation for maintenance of traffic signals on state owned facilities, attached hereto as Exhibit A and hereby made a part of this resolution.


Section 2. The contract will authorize reimbursement to the City in the amount of \$332,880 per year for five years, beginning in 2019.


Dated at Colorado Springs, Colorado this 8th day of October, 2019.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



(State Traffic Mtce)
CITY OF COLORADO SPRINGS

Rev 10/03
Region: 2 (VJM)

CONTRACT

THIS AGREEMENT is entered into by and between the CITY OF COLORADO SPRINGS (hereinafter called the "Local Agency"), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the "State" or "CDOT").

RECITALS:

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function: 2300, GL Account: 4541000010, and Cost Center: R2594-010. (Contract Encumbrance Amount: \$332,880.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Section 43-2-102 and 103, C.R.S., require the State to maintain State highways (including where such highways extend through a city or an incorporated town), and Section 43-2-135(1)(i), C.R.S., as amended, requires the State to install, operate, maintain and control, at State expense, all traffic control devices on the State highway system within cities and incorporated towns.
4. The parties desire to enter this contract for the Local Agency to provide some or all of the certain Highway maintenance services on State highways that are the responsibility of the State under applicable law, and for the State to pay the Local Agency a reasonable negotiated fixed rate for such services.
5. The parties also intend that the Local Agency shall remain responsible to perform any services and duties on State highways that are the responsibility of the Local Agency under applicable law, at its own cost.
6. The State and the Local Agency have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144, C.R.S., as amended, and if applicable, in an ordinance or resolution duly passed and adopted by the Local Agency, to enter into contract with the Local Agency for the purpose of maintenance of traffic control devices on the State highway system as hereinafter set forth.
7. The Local Agency has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Local Agency shall perform all maintenance services for the specified locations located within the Local Agency's jurisdiction and described in Exhibit A. Such services and highways are further detailed in Section 5.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 22 of this contract
2. This contract
3. Exhibit A (Scope of Work)
4. Exhibit C (Option Letter)
5. Exhibit D (Encumbrance Letter).

Section 3. Term

This contract shall be effective upon the date signed/approved by the State Controller, or designee, or on July 1, 2019, whichever is later. The term of this contract shall be for a term of FIVE (5) years. Provided, however, that the State's financial obligation for each subsequent, consecutive fiscal year of that term after the first fiscal year shall be subject to and contingent upon funds for each subsequent year being appropriated, budgeted, and otherwise made available therefor.

Section 4. Project Funding and Payment Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the State funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract

and to complete the work under the project. A copy of any such ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

- B. Subject to the terms of this contract, for the satisfactory performance of the maintenance services on the Highways, as described in Section 5, the State shall pay the Local Agency on a lump sum basis, payable in monthly installments, upon receipt of the Local Agency's Statements, as provided herein.
- C. The State shall pay the Local Agency for the satisfactory operation and maintenance of traffic control devices under this agreement at the rates described in **Exhibit A**.
- D. The Local Agency will provide maintenance services as described in **Exhibit A**, for a total maximum amount of **\$332,880.00 per State fiscal year, and a maximum contract total shall not exceed the cumulative five-year total of \$1,664,400.00**. The negotiated rate per location shall remain fixed for the full five-year term of the contract, unless this rate is renegotiated in accord with the procedure set forth herein in Section 17. The total payments to the Local Agency during the term of this contract shall not exceed that maximum amount, unless this contract is amended. The Local Agency will bill the State monthly and the State will pay such bills within 45 days.
- E. The Statements submitted by the Local Agency for which payment is requested shall contain an adequate description of the type(s) and the quantity(ies) of the maintenance services performed, the date(s) of that performance, and on which specific sections of the highways such services were performed, in accord with standard Local Agency billing standards.
- F. If the Local Agency fails to satisfactorily perform the maintenance services or if the Statement submitted by the Local Agency does not adequately document the payment requested, after notice thereof from the State, the State may deduct and retain a proportionate amount from the monthly payment, based on the above rate, for that segment or portion.

Section 5: State & Local Agency Commitments:

- A. The Local Agency shall perform the maintenance services for the certain State highway system locations described herein. Such services and locations are detailed in **Exhibit A**.
- B. The Local Agency shall operate and maintain the specific traffic control devices, and at the particular locations, all as listed on **Exhibit A**, in a manner that is consistent with current public safety standards on State highways within its jurisdictional limits, and in conformance with applicable portions of the "Manual on Uniform Traffic Control Devices" and the "Colorado Supplement" thereto, which are referred to collectively as the "Manual" and which are incorporated herein by reference as terms and conditions of this agreement. The Local Agency shall provide all personnel, equipment, and other services necessary to satisfactorily perform such operation and maintenance.
- C. The Parties shall have the option to add or delete, at any time during the term of this agreement and subject to §17 of this agreement, one or more specific traffic control devices to the list shown in **Exhibit A** and therefore amend the maintenance services to be performed by the Local Agency under this agreement. The State may amend **Exhibit A** by written notice to the Local Agency using an Option Letter substantially equivalent to **Exhibit C**.
- D. The Local Agency may propose, in writing, other potential specific traffic control devices to be operated and maintained by the Local Agency during the term of this agreement, based on the same rates that had been initially agreed to by the Local Agency in **Exhibit A**. If the State determines in writing that operation and maintenance of those other devices by the Local Agency is appropriate, and is desirable to the State, and if the State agrees to add such devices to this agreement, then the State shall, by written Option Letter issued to the Local Agency in a form substantially equivalent to **Exhibit C**, add such devices to this contract.
- E. The Local Agency shall perform all maintenance services on an annual basis. The Local Agency's performance of such services shall comply with the same standards that are currently used by the State for the State's performance of such services, for similar type highways with similar use, in that year, as determined by the State. The State's Regional Transportation Director, or his representative, shall determine the then current applicable maintenance standards for the maintenance services. Any standards/directions provided by the State's representative to the Local Agency concerning the maintenance services shall be in writing. The Local Agency shall contact the State Region office and obtain those standards before the Local Agency performs such services.

Section 6. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials that pertain to the costs incurred under this contract. The Local Agency 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. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and, if applicable, FHWA to inspect the project and to inspect, review and audit the project records.

Section 7. Termination Provisions

This contract may be terminated as follows:

A. This contract may be terminated by either party, but only at the end of the State fiscal year (June 30), and only upon written notice thereof sent by registered, prepaid mail and received by the non-terminating party, not later than 30 calendar days before the end of that fiscal year. In that event, the State shall be responsible to pay the Local Agency only for that portion of the highway maintenance services actually and satisfactorily performed up to the effective date of that termination, and the Local Agency shall be responsible to provide such services up to that date, and the parties shall have no other obligations or liabilities resulting from that termination.

Notwithstanding subparagraph A above, this contract may also be terminated as follows:

B. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

C. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

D. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 8. Legal Authority

The Local Agency 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 law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 9. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 2, 5615 Wills Blvd.. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 2 and the Local Agency. All communication, notices, and correspondence shall be addressed

to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State

CDOT Region: 2
Pepper Whittlef
Project Manager
5615 Wills Blvd.
Pueblo, CO 81008
719-546-5734
pepper.whittlef@state.co.us

If to the Local Agency

City of Colorado Springs Traffic Management Center
Todd Frisbie, Traffic Engineer
City of Colorado Springs
234 West Colorado Ave.
Colorado Springs, CO 80903
719-385-7603
TFrisbie@springsgov.com

Section 10. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11. Third Party Beneficiaries

It is expressly understood and agreed that 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 the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 12. 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, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. 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 § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 13. Severability

To the extent that 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, and 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.

Section 14. Waiver

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

Section 15. 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 by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed by the parties and approved pursuant to the State Fiscal Rules.

Section 16. Survival of contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 17. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

A. Amendment

Either party may suggest renegotiation of the terms of this contract, provided that the contract shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this contract, the renegotiated terms shall not be effective until this contract is amended/modified accordingly in writing. Provided, however, that the rates will be modified in accordance with applicable cost accounting principles and standards (including sections 24-107-101, et seq., C.R.S. and implementing regulations), and be based on an increase/decrease in the "allowable costs" of performing the Work. Any such proposed renegotiation shall not be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved by the State Controller or delegee. Any such rate change will go into effect on the first day of the first month following the amendment execution date.

B. Option Letter

- a. The State may increase/decrease the quantity of goods/services described in Exhibit A at the same unit prices (rates) originally established in the contract. The State may exercise the option by written notice to the Local Agency in a form substantially equivalent to Exhibit C.
- b. As a result of increasing/decreasing the locations, the State may also unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices (rates) originally established in the contract and the schedule of services required, as set by the terms of this contract. The State may exercise the option by providing a fully executed option to the Local Agency, in a form substantially equivalent to Exhibit C, immediately upon signature of the State Controller or an authorized delegate. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Any such rate change will go into effect on the first day of the first month following the option letter execution date.

C. State Encumbrance Letter

The State may encumber the funds up to the maximum amount allowed during a given fiscal year by unilateral execution of an encumbrance letter in a form substantially equivalent to Exhibit D. The State shall provide a fully executed encumbrance letter to the Local Agency after execution. Delivery/performance of the goods/services shall continue at the same rate and under the same terms as established in the contract.

Section 18. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract, which is not disposed of by agreement, will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 19. Does not supersede other agreements

This contract is not intended to supersede or affect in any way any other agreement (if any) that is currently in effect between the State and the Local Agency for other "maintenance services" on State Highway rights-of-way within the jurisdiction of the Local Agency. Also, the Local Agency shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Local Agency is required by applicable law to perform.

Section 20. SubLocal Agencies

The Local Agency may subcontract for any part of the performance required under this contract, subject to the Local Agency first obtaining approval from the State for any particular subLocal Agency. The State understands that the

Local Agency may intend to perform some or all of the services required under this contract through a subLocal Agency. The Local Agency agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State, which shall not be unreasonably withheld. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

Section 21. Statewide Contract Management System

If the maximum amount payable to Local Agency under this contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this § 21. Statewide Contract Management System applies.

Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of Local Agency performance on state contracts and inclusion of contract performance information in a Statewide contract management system.

Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this contract, State law, including CRS §24-103.5-101, and State fiscal rules, policies and guidance. Evaluation and review of the Local Agency's performance shall be part of the normal contract administration process and Local Agency's performance will be systematically recorded in the statewide contract management system. Areas of evaluation and review shall include, but shall not be limited to, quality, cost and timeliness. Collection of information relevant to the performance of Local Agency's obligations under this contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Local Agency's obligations. Such performance information shall be entered into the Statewide contract management system at intervals established herein and a final evaluation, review and rating shall be rendered within 30 days of the end of the contract term. Local Agency shall be notified following each performance evaluation and review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance evaluation and review determine that Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation, and showing of good cause, may debar Local Agency and prohibit Local Agency from bidding on future contracts. Local Agency may contest the final evaluation, review and rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Local Agency, by the Executive Director, upon showing of good cause.

Section 22. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

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

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. 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, contained in these statutes.

D. INDEPENDENT CONTRACTOR

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither Local Agency nor any agent or employee of Local Agency shall be deemed to be an agent or employee

of the State. The Local Agency shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Local Agency or any of its agents or employees. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. The Local Agency shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

The Local Agency shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Local Agency harmless; requires the State to agree to binding arbitration; limits Local Agency's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Local Agency's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

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

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

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

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency by deduction from subsequent payments under this Contract, deduction from any payment due

under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State.

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

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Local Agency 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 Local Agency that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Local Agency (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Local Agency has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Local Agency participates in the Department program, Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Local Agency fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Local Agency shall be liable for damages.

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

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

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Section 23. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

<p>THE LOCAL AGENCY CITY OF COLORADO SPRINGS</p> <p>Name: <u>John Suthers</u> (print name)</p> <p>Title: <u>Mayor</u> (print title)</p> <p><u>John W. Suthers</u> *Signature</p> <p>Date: <u>10/22/19</u></p>	<p>STATE OF COLORADO Jared S. Polis Department of Transportation</p> <p>By: <u>[Signature]</u> Stephen [Signature], P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director</p> <p>Date: <u>31 Oct 2019</u></p>
<p>2nd Local Agency Signature if needed</p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p>STATE OF COLORADO LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p>By: <u>N/A</u> Signature – Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

**STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD**

By: [Signature]
Colorado/Department of Transportation

Date: 11/7/19

APPROVED AS TO FORM

[Signature]
**SENIOR CORPORATE ATTORNEY
CITY OF COLORADO SPRINGS**

EXHIBIT A - Scope of Work - Traffic Signal Maintenance

- The City shall maintain the traffic signals.
- Any reconstruction, modification, or improvement initiated by the City or performed as a result of a City project shall be included in the maintenance provided by the City.
- Any reconstruction, modification, or improvement initiated by the State or performed as a result of a State project shall be paid for separately by the State.
- The City shall perform semiannual inspections of all approaches at each location and maintain files for each year of this contract. Inspection shall include, but not be limited to:
 - o Each signal lens is operating and visible
 - o Signal Timing is operating as programmed
 - o Controller and Cabinet are clean and in good repair
 - o Vehicle detection is operating properly
 - o All luminaries attached to the signal are operating
 - o Conflict monitor test
- Any defects found at these intersections shall be remedied immediately. Defects and remediation shall be documented and kept on file at the City and copied to COOT. Any defects not remedied within one month of discovery, shall incur a price reduction to the monthly compensation of \$250.00 per defective signal until all defects of the signal are remedied.
- Yearly signal inspections shall include: the cursory visual inspection of signal caissons, bolts, bolt tightening, steel, welds, and attachment hardware. The City shall maintain annual records for review by CDOT and allow cursory inspection by CDOT staff to verify accuracy of inspection report. Any deficiencies found in bolt tightening and attachment hardware shall be corrected immediately. Any deficiencies in the structure shall be documented and brought to the immediate attention of the CDOT project manager.

Traffic Signal Rate Schedule

76 signals at \$365.00 per signal per month = \$27,740.00 per month

\$27,740.00 per month x 12 months = \$332,880.00 total maximum annual payment

\$332,880.00 per year x 5 years = \$1,664,400.00 not to exceed total for the contract

LIST OF TRAFFIC SIGNAL INTERSECTIONS

INTERSECTION
8TH/CIMARRON
21ST/CIMARRON
26TH/CIMARRON
31ST/CIMARRON
ACADEMY NB/I-25
ACADEMY SB/I-25
I-25/WOODMEN NB
I-25/WOODMEN SB
Corporate/I-25/Nevada NB
Corporate/I-25/Nevada SB
I-25/ROCKRIMMON NB
I-25/ROCKRIMMON SB
GARDEN OF THE GODS/I-25
FILLMORE/I-25 SB
FILLMORE/I-25 NB
I-25/JINTAH NB
I-25/JINTAH SB
BIJOU NB/I-25
BIJOU SB/I-25
CIMARRON/I-25 NB
CIMARRON/I-25 SB
I-25/TEJON NB
I-25/TEJON SB
I-25 SB/NEVADA
I-25 NB off ramp/NEVADA
CIRCLE/I-25 NB
I-25 SB/Lake (Circle I-25 SB)
ARVADA/MOTOR WAY/NEVADA
BROOKSIDE/NEVADA
NEVADA/RAMONA/MT WASHINGTON
NEVADA/ST ELMO
Cheyenne Rd/ NEVADA/ SOUTHGATE
CHEYENNE MDWS/HWY 115/STAR RANCH
CHEYENNE MTN HWY 115
FOUNTAIN/MALLARD
Chetton/FOUNTAIN
ACADEMY Park loop/Alvarado/FOUNTAIN
ACADEMY/FOUNTAIN
FOUNTAIN/Murray
FOUNTAIN/Jet Wing
Aeroplaza/FOUNTAIN

HWY 83/SHOUP
HWY 83/POWERS NB
HWY 83/POWERS SB
HWY 83/NORTH GATE BLVD
OLD RANCH E/POWERS
OLD RANCH W/POWERS
POWERS/UNION E
POWERS/UNION W
BRIARGATE PKWY/POWERS E
BRIARGATE PKWY/POWERS W
POWERS/RESEARCH
POWERS/WOODMEN E
POWERS/WOODMEN W
DUBLIN/POWERS
POWERS/STETSON HILLS
BARNES/POWERS
CAREFREE CIR N/POWERS
CAREFREE CIR S/POWERS
Constitution/POWERS
Palmer Park/POWERS
GALLEY/POWERS
PLATTE E/POWERS
PLATTE W/POWERS
AIRPORT/POWERS
Aeroplaza/POWERS
FOUNTAIN/POWERS
ASTROZON/POWERS
Hancock/POWERS/ZEPPELIN
MILTON E PROBY/POWERS
HWY 24/PETERSON RD N
HWY 24/PETERSON RD S
Manitou/US 24 Westbound Off Ramp
Manitou/US 24 Eastbound Off Ramp
Manitou/Crystal Park
Manitou/Pawnee

EXHIBIT B – LOCAL AGENCY RESOLUTION

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION
(if applicable)**

RESOLUTION NO. 92-19


A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT BETWEEN THE CITY OF COLORADO SPRINGS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR MAINTAINING TRAFFIC SIGNALS ON STATE OWNED FACILITIES

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. That the Mayor is hereby authorized to execute a contract between the City of Colorado Springs and the Colorado Department of Transportation for maintenance of traffic signals on state owned facilities, attached hereto as Exhibit A and hereby made a part of this resolution.

Section 2. The contract will authorize reimbursement to the City in the amount of \$332,880 per year for five years, beginning in 2019.

Dated at Colorado Springs, Colorado this 8th day of October, 2019.



Council President

ATTEST:

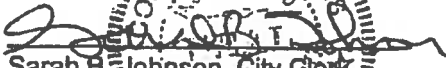
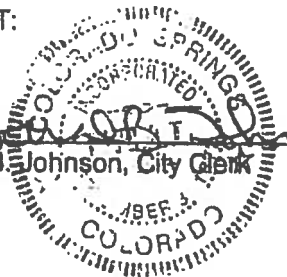

Sarah B. Johnson, City Clerk


EXHIBIT C – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only) NOTE: This option is limited to the specific contract scenarios listed below AND may be used in place of exercising a formal amendment.

Date	State Fiscal Year	Option Letter No.	Routing #
Project Code	Original Contract #	PO #	OLA #

Contractor: **THE LOCAL AGENCY NAME**

Option A)

SUBJECT

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s)(a new *Exhibit C* must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option B)

SUBJECT

Option to unilaterally transfer funds from one phase to another phase. (a new *Exhibit C* must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option C)

SUBJECT

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to transfer funds from one phase to another phase, and to update encumbrance amounts. (a new *Exhibit C* must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option D)

SUBJECT

Option to Update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in Exhibit C. The State may update any information contained in Exhibit C, Sections 2 and 4 of the Table, and sub-sections B and C of the Exhibit C.

REQUIRED PROVISIONS

Option A) (Insert the following language for use with the Option A):

In accordance with the terms of the original Agreement 17-HA5-XA-12345 between the State of Colorado, Department of Transportation and THE LOCAL AGENCY NAME, the State hereby exercises the option to add a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous) and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is now INCREASED by \$\$\$\$\$\$. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. (The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.).

Option B) (Insert the following language for use with Option B):

In accordance with the terms of the original Agreement 16-HAA-XA-12345 between the State of Colorado, Department of Transportation and THE LOCAL AGENCY NAME, the State hereby exercises the option to transfer

EXHIBIT C – OPTION LETTER

funds from *(describe phase from which funds will be moved)* to *(describe phase to which funds will be moved)* based on variance in actual phase costs and original phase estimates. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. *(The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)*

Option C) (Insert the following language for use with Option C):

In accordance with the terms of the original Agreement 17-HA5-XA-12345 between the State of Colorado, Department of Transportation and THE LOCAL AGENCY NAME, the State hereby exercises the option to 1) add a phase that will include *(describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*; 2) to encumber funds for the phase based on changes from federal, state, and/or local match; and 3) to transfer funds from *(describe phase from which funds will be moved)* to *(describe phase to which funds will be moved)* based on variance in actual phase costs and original phase estimates. A new Exhibit C-1 is made part of the original Agreement and replaces Exhibit C. *(The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)*.

Option D) (Insert the following language for use with Option D):

Option to Update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in Exhibit C. The State may update any information contained in Exhibit C, Sections 2 and 4 of the Table, and sub-sections B and C of the Exhibit C.

(The following language must be included on ALL options):

The total encumbrance as a result of this option and all previous options and/or amendments is now \$\$\$\$\$ (insert total encumbrance amount), as referenced in Exhibit C-1 (C-1, C-2, etc., as appropriate). The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: \$\$\$\$\$ (indicate total budgeted funds) as referenced in Exhibit C-1 (C-1, C-2, etc., as appropriate).

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS

State of Colorado:
Jared S. Polis, Governor

Date: _____

By: (CDOT CHIEF ENGINEER'S NAME), Chief Engineer

For: (CDOT EXECUTIVE DIRECTOR'S NAME), Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

State Controller
(STATE CONTROLLER'S NAME)

By: _____

Date: _____

EXHIBIT D SAMPLE ENCUMBRANCE LETTER

Date: <input style="width: 50px;" type="text"/>	State Fiscal Year: <input style="width: 50px;" type="text"/>	Encumbrance Letter No. <input style="width: 50px;" type="text"/>	Routing #: <input style="width: 50px;" type="text"/>
		Orig. IGA: <input style="width: 50px;" type="text"/>	PO: <input style="width: 50px;" type="text"/>

- 1) Encumber fiscal year funding in the contract.
- 2) **PROVISIONS:** In accordance with Section 4 and Exhibit C of the original Contract routing number Orig Routing # between the State of Colorado, Department of Transportation, and Contractor's Name, covering the term July 1, Year through June 30, Year, the State hereby encumbers funds for the goods/services specified in the contract for fiscal year .

The amount to be encumbered by this Encumbrance Letter is \$amount of change. The Total contract (encumbrance) amount, including all previous amendments, option letters, etc. is \$Insert New \$ Amt.

- 3) **EFFECTIVE DATE.** The effective date of this Encumbrance Letter is upon approval of the State Controller.

STATE OF COLORADO
Jared S. Polis, GOVERNOR
 Department of Transportation

By: _____
 Joshua Laipply, P.E., Chief Engineer
 (For) Shoshana M. Lew, Executive Director

Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
 Department of Transportation

Date: _____