

RESOLUTION NO. 38-17

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AND ADMINISTER AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE FUNDING OF THE CHEYENNE CAÑON ROAD BRIDGE REPLACEMENTS PROJECT.

WHEREAS, the Colorado Department of Transportation ("CDOT") is providing funds for the design and construction of the Cheyenne Cañon Road Bridge Replacements Project, which is identified as Project # STM M240-164 (21129) (the "Project"); and

WHEREAS, pursuant to Colorado Revised Statutes § 29-1-203, the City Council has the authority to approve an Intergovernmental Agreement ("IGA") between the City of Colorado Springs (the "City") and CDOT; and

WHEREAS, the City Council finds that it is in the best interest of the City and its citizens to enter into this IGA and allow the City's Public Works Department to utilize the funding for the Project; and

WHEREAS, the total Project cost is estimated to be \$2,861,253.00; and

WHEREAS, the City will provide a local match for the Project in the amount of \$558,501.00; and

WHEREAS, the IGA between CDOT and the City must be approved and fully executed to secure the CDOT funding.

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

Section 1. The IGA between the City of Colorado Springs and the Colorado Department of Transportation for the funding of the Cheyenne Cañon Road Bridge Replacements Project, a copy of which is attached and incorporated herein as Exhibit A, is hereby approved.

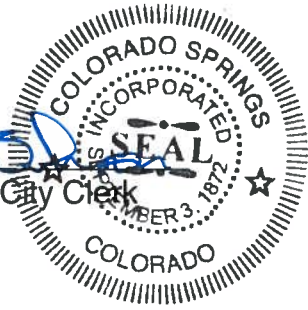
Section 2. The Mayor is hereby authorized to execute and administer the IGA.

Dated at Colorado Springs, Colorado this 28<sup>th</sup> day of March, 2017.

  
\_\_\_\_\_  
Council President

ATTEST:

  
Sarah B. Johnson, City Clerk



State \$LAWRK  
PROJECT: BRO M240-164 (21129)  
Cheyenne Cañon Bridges

REGION: 2 (vjm)

### CONTRACT

THIS CONTRACT made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation, hereinafter referred to as the "State" or "CDOT", and the CITY OF COLORADO SPRINGS hereinafter referred to as the "Contractor" or the "Local Agency."

### 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, Contract Encumbrance Amount: \$2,861,253.00.)
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the State (or Local Agency) highway system.
4. Local Agency anticipates a project for the design and construction of up to three bridges located in North Cheyenne Cañon Park, which is on the National Historic Registry (CSG-C.90-05.70, CSG-D.10-05.70 and CSG-D.60-05.65), and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written "Notice to Proceed" prior to commencing any part of the Work. The Local Agency further understands, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.
5. The Local Agency has requested that State funds be made available for project BRO M240-164 (21129) Cheyenne Canyon Bridges, defined herein as the "Project" or the "Work." The Work will be performed in the City of Colorado Springs, Colorado, and is specifically described in **Exhibit A**.
6. The State has funds available and desires to provide a portion of the funding for the Work.
7. The Local Agency desires to comply with all State and other applicable requirements, including the State's general administration of the Project through this contract, in order to obtain State funds for the Project.
8. 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. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.
9. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4) (c) and 43-2-144, C.R.S. and **Exhibit B**.
10. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the Work.
11. The Local Agency can more advantageously perform the Work.

### **THE PARTIES NOW AGREE THAT:**

#### **Section 1. Scope of Work**

The Project or the Work under this contract shall consist of the design and construction of up to three bridges located in North Cheyenne Cañon Park, which is on the National Historic Registry (CSG-C.90-05.70, CSG-D.10-05.70 and CSG-D.60-05.65), in the City of Colorado Springs, Colorado, as more specifically described in **Exhibit A**.

#### **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 27 of this contract
2. This contract
3. **Exhibit B** (Resolution or Ordinance)

4. **Exhibit A** (Scope of Work)
5. **Exhibit C** (Funding Provisions)
6. Other Exhibits in descending order of their attachment.

### **Section 3. Term**

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA (if applicable), and the Local Agency.

### **Section 4. Project Funding 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. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.
- B. The parties hereto agree that this contract is contingent upon all State funds designated for the Project herein being made available from State sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.
- C. Funding for the Project is set forth and detailed in **Exhibit C**, attached hereto and incorporated herein by reference.

### **Section 5. Project Payment Provisions**

- A. The State will reimburse the Local Agency for the State's share of incurred costs relative to the Project following the State's review and approval of such charges, subject to the terms and conditions of this contract. Provided however, that charges incurred by the Local Agency prior to the date this contract is executed by the State Controller will not be charged by the Local Agency to the Project, and will not be reimbursed by the State.
- B. The State will reimburse the State's share of the Local Agency's reasonable, allocable, allowable costs of Performance of the Work, not exceeding the maximum total amount described in Section 4. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
  1. In accordance with the provisions of Section 4 and with the terms and conditions of this contract;
  2. Necessary for the accomplishment of the Work;
  3. Reasonable in the amount for the goods and services provided;
  4. Actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
  5. Incurred for Work performed after the effective date of this contract;
  6. Satisfactorily documented.
- C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that Project funds are expended and costs accounted for in a manner consistent with this contract and Project objectives.
  1. All allowable costs charged to the Project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
  2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the Project account, shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.
- D. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
  1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to

- the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.
- E. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the Project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State.
- F. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.
1. 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. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
  2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
  3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
  4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

#### **Section 6. State and Local Agency Commitments**

The Scope of Work in **Exhibit A** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The "Responsible Party" referred to in this contract means the Responsible Party as identified in the Scope of Work in **Exhibit A**.

##### **A. Design [if applicable]**

1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Responsible Party shall comply with the following requirements, as applicable:
  - a. perform or provide the Plans, to the extent required by the nature of the Work.
  - b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
  - c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
  - d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
  - e. stamp the Plans produced by a Colorado Registered Professional Engineer.
  - f. provide final assembly of Plans and contract documents.
  - g. be responsible for the Plans being accurate and complete.
  - h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.
2. If the Local Agency is the Responsible Party:
  - a. The Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
  - b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements, if applicable.
  - c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the

contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State. If the Local Agency does enter into a contract with a consultant for the Work:

- (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
- (2) it shall ensure that all changes in the consultant contract have prior approval by the State and FHWA. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
- (3) it shall require that all consultant billings under that contract shall comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
- (4) it (or its consultant) shall comply with 23 CFR 172.5(b).
- (5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency's attorney/authorized representative certifying compliance with 23 CFR 172.5(b).
- (6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
  - (a) "The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the Project. The State is an intended third party beneficiary of this contract for that purpose."
  - (b) "Upon advertisement of the Project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the Project."
  - (c) "The consultant shall review the construction contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this Work."
  - (d) The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State and FHWA requirements, if applicable.

**B. Construction [if applicable]**

1. If the Work includes construction, the Responsible Party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Scope of Work in **Exhibit A**. Such administration shall include Project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Scope of Work in **Exhibit A**.
2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct Project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
3. If the Local Agency is the Responsible Party:
  - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
  - b. if bids are to be let for the construction of the Project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
    - (1) The Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.

- (2) By indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this Project if no additional federal-aid funds will be made available for the Project. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. This paragraph also applies to projects advertised and awarded by the State.
- c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.
  - (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA, if applicable, in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
  - (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.
  - (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.
  - (4) All force account work shall have prior approval of the State and/or FHWA, if applicable, and shall not be initiated until the State has issued a written notice to proceed.
- C. State's obligations
  1. The State will perform a final Project inspection prior to Project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign a final acceptance form.
  2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Scope of Work in **Exhibit A**, within the Work of this contract.

#### **Section 7. ROW Acquisition and Relocation**

If the Project includes right of way, prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at [http://www.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/).

If right of way is purchased for a state highway, including areas of influence of the state highway, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

#### **Section 8. Utilities**

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

#### **Section 9. Railroads**

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

- A. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
- B. Obtaining the railroad's detailed estimate of the cost of the Work.
- C. Establishing future maintenance responsibilities for the proposed installation.
- D. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- E. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

#### **Section 10. Environmental Obligations**

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

#### **Section 11. Maintenance Obligations**

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State and to FHWA, if applicable. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA, if applicable, will make periodic inspections of the Project to verify that such improvements are being adequately maintained.

#### **Section 12. Record Keeping**

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which 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 FHWA to inspect the Project and to inspect, review and audit the Project records.

#### **Section 13. Termination Provisions**

This contract may be terminated as follows:

- A. 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.
- B. 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.

- C. **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 14. 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 15. Representatives and Notice**

Each individual identified below is the principal representative of the designating party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

##### **If to State**

CDOT Region: 2  
Donald Scanga, P.E.  
Project Manager  
905 Erie Avenue  
Pueblo, CO 81001  
719-546-5434  
[donald.scanga@state.co.us](mailto:donald.scanga@state.co.us)

##### **If to the Local Agency**

City of Colorado Springs  
Aaron Egbert, P.E.  
Project Manager  
P.O. Box 1575, Mail Code 410  
Colorado Springs, CO 80901-1575  
719-385-5465  
[aegbert@springsgov.com](mailto:aegbert@springsgov.com)

#### **Section 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 and approved pursuant to the State Fiscal Rules.

**Section 22. 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 23. 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.

**Section 24. Disadvantaged Business Enterprise (DBE)**

The Local Agency will comply with all requirements regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 CFR Part 26 under this contract, it must submit a copy of its program's requirements to the State for review and approval before the execution of this contract. If the Local Agency uses its program for this contract, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for its use as described above.

**Section 25. OPTION LETTER MODIFICATION**

An option letter may be used to add a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

**A. Option to add a phase and/or increase or decrease the total encumbrance amount.**

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds remaining the same. The State may simultaneously increase and/or decrease the total encumbrance amount by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled C-2, C-3, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

**B. Option to transfer funds from one phase to another phase.**

The State may require or permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled C-2, C-3, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

**C. Option to do both Options A and B.**

The State may require the Local Agency to add a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled C-2, C-3, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. The Local Agency will comply with all requirements of **Exhibit C** regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 CFR Part 26 under this contract, it must submit a copy of its program's requirements to the State for review and approval before the execution of this contract. If the Local Agency uses its program for this contract, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for its use as described above.

**Section 26. 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 27. Statewide Contract Management System**

If the maximum amount payable to Contractor under this contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§ 26 Statewide Contract Management System** applies. Contractor 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 vendor performance on State contracts and inclusion of contract performance information in a statewide contract management system.

Contractor'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 Contractor's performance shall be part of the normal contract administration process and Contractor'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 Contractor'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 Contractor'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. Contractor 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 Contractor 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 Contractor and prohibit Contractor from bidding on future contracts. Contractor 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 Contractor, by the Executive Director, upon showing of good cause.

**Section 28. Special Provisions.**

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 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. **GOVERNMENTAL IMMUNITY.** 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 Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** 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 deemed to be an agent or employee of the State. Contractor 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 Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly 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.
6. **CHOICE OF LAW.** 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. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not 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 shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. 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. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain 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 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.
9. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF 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. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. **VENDOR OFFSET.** CRS §§24-30-202 (1) and 24-30-202.4. *[Not Applicable to intergovernmental agreements]* Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (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 as a result of final agency determination or judicial action.
11. **PUBLIC CONTRACTS FOR SERVICES.** CRS §8-17.5-101. *[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]* Contractor 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 Department program established pursuant to CRS §8-17.5-102(5)(c), 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 (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.*

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

**Revised 1-1-09**

**Section 28. 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 align="center"><b>THE LOCAL AGENCY CITY OF COLORADO SPRINGS</b></p> <p>By: _____          Title: _____</p> <p align="center">_____          *Signature</p> <p>Date: _____</p>	<p align="center"><b>STATE OF COLORADO John W. Hickenlooper Department of Transportation</b></p> <p>By _____          Joshua Laipply, P.E., Chief Engineer          (For) Shailen P. Bhatt, Executive Director</p> <p>Date: _____</p>
<p><b>2nd Local Agency Signature if needed</b></p> <p>Name: _____          (print name)</p> <p>Title: _____          (print title)</p> <p align="center">_____          *Signature</p> <p>Date: _____</p>	<p align="center"><b>STATE OF COLORADO LEGAL REVIEW Cynthia H. Coffman, Attorney General</b></p> <p>By _____          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: \_\_\_\_\_  
 Colorado Department of Transportation

Date: \_\_\_\_\_

## **EXHIBIT A – SCOPE OF WORK**

### **1. General Description**

The Local Agency shall be responsible for design and construction of up to three bridges located in North Cheyenne Cañon Park which is on the National Historic Registry (CSG-C.90-05.70, CSG-D.10-05.70 and CSG-D.60-05.65). The first bridge is located 1.1 miles up Cheyenne Canyon from Evans Avenue or the Starsmore Discovery Center.

All three bridges are load posted, hydraulically inadequate, and have poor roadway geometry. For efficiencies, cost savings measures and based upon past experience on the Evan Avenue Bridge replacement project which is also located within North Cheyenne Cañon Park, the Local Agency proposes to submit all three bridges at once for clearance. The Local Agency also believes that it would be least disruptive to the community and tourism industry if all three bridges were replaced at the same time.

STIP# (SPP7003.001)

TIP# (13-1)

### **2. Definitions**

City of Colorado Springs (CS)

### **3. Personnel**

#### **3.1. Responsible Administrator.**

The Local Agency's performance hereunder shall be under the direct supervision of the Project Manager identified in §18 of the contract.

#### **3.2. Replacement**

The Local Agency shall immediately notify the State if any key personnel cease to serve and seek its approval. Such notice shall specify why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change would take effect. Anytime key personnel cease to serve, the State, in its sole discretion, may direct the Local Agency to suspend performance on the Work until such time as their replacements are approved. All notices sent under this subsection shall be sent in accordance with §18 of the contract.

### **4. Administrative Requirements**

At all times from the effective date of this contract until completion of the Work, the Local Agency shall maintain properly segregated books of State contract funds, matching funds, and other funds associated with the Work. All receipts and expenditures associated with said Work shall be documented in a detailed and specific manner, and shall accord with the Work budget set forth herein.

### **5. Monitoring**

The State shall monitor this Work on an as-needed basis. The State may choose to audit the business activities performed under this contract. The Local Agency 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 activities undertaken pursuant to this contract. Such books and records shall contain documentation of the participant's pertinent activity under this contract in a form consistent with good accounting practice.

**EXHIBIT B – LOCAL AGENCY RESOLUTION**

**LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION**



**EXHIBIT C – FUNDING PROVISIONS**

**STM M240-164 (21129)**

**A. Cost of Work Estimate**

The Local Agency has estimated the total cost of the Work to be \$2,861,253.00, which is to be funded as follows:

<b>1 BUDGETED FUNDS</b>				
a. State Funds (82.79% of Participating Costs)				\$408,000.00
State Funds (80.00% of Participating Costs)				<u>\$1,894,752.00</u>
Total State Funds				\$2,302,752.00
b. Local Agency Matching Funds (17.21% of Participating Costs)				\$84,813.00
Local Agency Matching Funds (20.00% Participating Costs)				<u>\$473,688.00</u>
Total Local Agency Funds				\$558,501.00
<b>TOTAL BUDGETED FUNDS</b>				<b>\$2,861,253.00</b>
<b>2 ESTIMATED CDOT-INCURRED COSTS</b>				
a. Federal Share				\$0.00
(0% of Participating Costs)				
b. Local Share				\$0.00
Local Agency Share of Participating Costs	\$0.00			
Local Agency Share of Non-Participating Costs	\$0.00			
<b>TOTAL ESTIMATED CDOT-INCURRED COSTS</b>				<b>\$0.00</b>
<b>3 ESTIMATED PAYMENT TO LOCAL AGENCY</b>				
a. State Funds Budgeted (1a)				\$2,302,752.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>				<b>\$2,302,752.00</b>
<b>FOR CDOT ENCUMBRANCE PURPOSES</b>				
Total Encumbrance Amount				\$2,861,253.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				<u>\$2,861,253.00</u>
<b>NOTE: Only design funds are currently available; construction funding will become available in future after execution of an Option Letter (Exhibit D).</b>				
WBS Element 21129.10.30	Design	3020		\$408,000.00
WBS Element 21129.20.10	Const	3301		\$0.00

## **B. Matching Funds**

The matching ratio for the state participating funds for this Work is 82.79% or 80.00% State funds to 17.21% or 20%, respectively, Local Agency funds, it being understood that such ratio applies only to the \$2,861,253.00 that is eligible for State participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$2,861,253.00, and additional State funds are made available for the Work, the Local Agency shall pay 17.21% or 20.00%, as applicable, of all such costs eligible for State participation and 100% of all non-participating costs; if additional State funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$2,861,253.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

## **C. Maximum Amount Payable**

The maximum amount payable to the Local Agency under this Agreement shall be \$2,302,752.00 (for CDOT accounting purposes, the State funds of \$2,302,752.00 and the Local Agency matching funds of \$558,501.00 will be encumbered for a total encumbrance of \$2,861,253.00), unless such amount is decreased as described in Sections B. and C. of this **Exhibit C**, or increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. **NOTE: Only design funds are currently available; construction funding will become available in future after execution of an Option Letter (Exhibit D).** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award. The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the State participating funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 25. of this contract.

**31. EXHIBIT D – 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.)*.

**REQUIRED PROVISIONS**

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

In accordance with the terms of the original Agreement **17-HA2-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 **17-HA2-XA-12345** between the State of Colorado, Department of Transportation and **THE LOCAL AGENCY NAME**, the State hereby exercises the option 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 C)** (Insert the following language for use with Option C):

**31. EXHIBIT D – OPTION LETTER**

In accordance with the terms of the original Agreement 17-HA2-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.)*

**(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:  
John W. Hickenlooper, 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: \_\_\_\_\_