

(State SHWY Mtce)  
CITY OF BOULDER

Rev 10/03  
Region: 4 (DZ)

### CONTRACT

**THIS AGREEMENT is entered into by and between CITY OF BOULDER (hereinafter called the “Local Agency” or “Contractor”), 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. Contract Encumbrance Amount: \$0.00.
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. 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 Contractor 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 Contractor a reasonable negotiated fixed rate for such services.
5. The parties also intend that the Contractor shall remain responsible to perform any services and duties on state highways that are the responsibility of the Contractor under applicable law, at its own cost.
6. The State and the Contractor 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 in applicable ordinance or resolution duly passed and adopted by the Contractor, to enter into contract with the Contractor for the purpose of maintenance of traffic control devices on the state highway system as hereinafter set forth.
7. The Contractor 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 October 1, 2021, whichever is later. The term of this contract shall terminate on **June 30, 2026**. Provided, however, that the State's and the Contractor'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 this 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 Local Agency will provide Maintenance Services as described in **Exhibit A**, for a **total maximum amount of \$108,660.00 for FY 22 (partial) and \$144,880.00 per State fiscal year (FY 23 through FY 26), with a maximum contract total shall not exceed the cumulative total of \$668,180.00**. The negotiated rate per mile 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.
- D. 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**.
- 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 highway miles as listed on **Exhibit A**. As used herein the term "maintenance services" shall mean only those maintenance services normally performed by the State to comply with its responsibility under §§43-2-102 and 43-2-135, C.R.S., as described in the State's then current "Maintenance Management Information Manual", as amended, which is incorporated herein by this reference. The Local Agency shall obtain a copy of that Manual from the State before it performs any Maintenance Services under this contract. Maintenance Services do not include reconstruction of portions of the highways destroyed by major disasters, fires, floods, or Acts of God. Provided, however, that the Local Agency shall give the State immediate notice of the existence of any such conditions on the Highways.
  - 1. Maintenance Services to be performed by the Local Agency, at State expense, for the Highways under this contract shall include (without limitation) the following services:
    - a. Removal of snow, sanding and salting.
    - b. Patching, making safe, repairing, spot reconditioning, spot stabilization and spot seal coating, including shoulders, and damage caused by ordinary washouts.
    - c. Painting of bridges, of other structures, and of highway appurtenances.
    - d. Warning the State's representative of any "dangerous condition" (as defined in §24-10-103(1) C.R.S., as amended), and/or repairing conditions that are the Contractor's obligation as set forth in this IGA.
    - e. Inspecting State Highway signing and regulatory devices on the Highways at least weekly and notifying the State's Regional Transportation Director as soon as the Local Agency has notice of any State Highway signing and regulatory devices in need of repair.
  - 2. Local Agency shall also continue to perform, at its own expense, all activities/duties on the Highways that Local Agency is required to perform by §43-2-135 (1) (a) and (e), C.R.S., as amended, including, but not limited to: cutting weeds and grasses within the State's right of way; fence maintenance; cleaning of roadways, including storm sewer inlets and catch basins; cleaning of roadside drainage ditches (excluding water supply and irrigation ditches and appurtenances); and repairing of small drainage structures such as inlets and culvert end sections, excluding storm sewers and drainage and irrigation culverts and structures.
- C. 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 their 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.

- D. The Local Agency shall perform the Maintenance Services in a satisfactory manner and in accordance with the terms of this contract. The State reserves the right to determine the proper quantity and quality of the Maintenance Services performed by the Local Agency, as well as the adequacy of such services, under this contract. The State may withhold payment, if necessary, until Local Agency performs the Maintenance Services to the State's satisfaction. The State will notify the Local Agency in writing of any deficiency in the Maintenance Services. The Local Agency shall commence corrective action within 24 hours of receiving actual notice of such deficiency: a) from the State; b) from its own observation; or c) by any other means. In the event the Local Agency, for any reason, does not or cannot correct the deficiency within 24 hours, the State reserves the right to correct the deficiency and to deduct the actual cost of such work from the subsequent payments to the Local Agency, or to bill the Local Agency for such work.

## Section 6. 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 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 4, Project Manager. 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 4 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: 4  
Tim Miles, MTCE Superintendent  
Project Manager  
10601 West 10th Street  
Greeley, CO 80634  
970-350-2120

**If to the Local Agency**

City of Boulder  
Scott Schlecht  
Interim Transportation Maintenance Manager  
Municipal Services Center 5050 Pearl St.  
Boulder, CO 80301  
303-413-7115

**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 and the Contractor, its departments, 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 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 delegate. 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 except for those contracts for “maintenance services” that have been terminated in writing or expired according to their own terms. 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. Subcontractors**

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 subcontractor. The State understands that the Local Agency may intend to perform some or all of the services required under this contract through a subcontractor. 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 **§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 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.

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**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**

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 shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **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. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor 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.**

Contractor 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 Contractor harmless; requires the State to agree to binding arbitration; limits Contractor'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 Contractor'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. 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.

**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. 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.

**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 Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, 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]* 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 State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., 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 **(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 Contractor 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 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 §§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, Contractor shall be liable for damages.

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

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(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.



**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.

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|---|--|
| <p align="center"><b>THE LOCAL AGENCY<br/>CITY OF BOULDER</b></p> <p>Name: <u>SEE ATTACHED SIGNATURE PAGE</u><br/>(print name)</p> <p>Title: _____<br/>(print title)<br/>see attached signature page</p> <p>_____<br/>*Signature</p> <p>Date: _____</p> | <p align="center"><b>STATE OF COLORADO<br/>Jared S. Polis<br/>Department of Transportation</b></p> <p>DocuSigned by:<br/><u>Steve Harelson</u><br/>AB4C0B01642B42E</p> <p>By _____<br/>Stephen Harelson, P.E., Chief Engineer<br/>(For) Shoshana M. Lew, Executive Director</p> <p>Date: <u>10/20/2021</u></p> |
| <p><b>2nd Local Agency Signature if needed</b></p> <p>Name: _____<br/>(print name)</p> <p>Title: _____<br/>(print title)<br/>see attached signature page</p> <p>_____<br/>*Signature</p> <p>Date: _____</p>   | <p align="center"><b>STATE OF COLORADO<br/>LEGAL REVIEW<br/>Philip J. Weiser, Attorney General</b></p> <p>By <u>N/A</u><br/>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.

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| <p align="center"><b>STATE OF COLORADO<br/>STATE CONTROLLER<br/>Robert Jaros, CPA, MBA, JD</b></p> <p>DocuSigned by:<br/><u>Don Copelana</u><br/>BDA801C5CFAC478...</p> <p>By: _____<br/>Colorado Department of Transportation</p> <p>Date: <u>10/21/2021</u></p> |
|---|

**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 align="center"><b>THE LOCAL AGENCY<br/>CITY OF BOULDER</b></p> <p>Name: <u>Nuria Rivera-Vandermyde</u><br/>(print name)</p> <p>Title: <u>City Manager</u><br/>(print title)</p> <p><u></u><br/>*Signature</p> <p>Date: <u>October 8, 2021</u></p>                 | <p align="center"><b>STATE OF COLORADO<br/>Jared S. Polis<br/>Department of Transportation</b></p> <p>By _____<br/>Stephen Harelson, P.E., Chief Engineer<br/>(For) Shoshana M. Lew, Executive Director</p> <p>Date: _____</p> |
| <p><b>2nd Local Agency Signature if needed<br/>approved as to form</b></p> <p>Name: <u>Janet T Michels</u><br/>(print name)</p> <p>Title: <u>Senior Assistant City Attorney</u><br/>(print title)</p> <p><u></u><br/>*Signature</p> <p>Date: <u>10-07-2021</u></p> | <p align="center"><b>STATE OF COLORADO<br/>LEGAL REVIEW<br/>Philip J. Weiser, Attorney General</b></p> <p>By _____<br/>Signature – Assistant Attorney General</p> <p>Date: _____</p>   |

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| <p align="center"><b>STATE OF COLORADO<br/>STATE CONTROLLER<br/>Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____<br/>Colorado Department of Transportation</p> <p>Date: _____</p> |
|--|

## **Exhibit A - Scope of Work**

### **Colorado Department of Transportation Scope of work for Maintenance performed duties by the City of Boulder.**

The Local Agency shall perform all "maintenance services" for the State and US Highway System segments described herein, SH 93A MP 15.150 to MP 18.850, SH 7B MP 49.506 to MP 50.639, SH 7C MP 52.490 to MP 55.160, US 36B MP 34.000 to MP 37.600, SH 157A MP 0.000 to MP 3.100, SH 119B MP 44.240 to MP 45.000, US 36E MP 0.000 to MP 0.280, SH 119A MP 40.757 to MP 41.770, located within the Local Agency's jurisdiction, for a total of 16.236 center line miles which is equivalent to 72.44 lane miles, as detailed in Exhibit A, attached hereto and incorporated herein by this reference. To include current and future park-and-ride locations within the local Agencies jurisdiction. All work will be performed in accordance to standards set by the state maintenance section.

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 43-2-135 describes certain specific responsibilities of the State and affected local entities (respectively) with respect to state highways that are also part of a local street system;

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; and

The Local Agency has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.**

SH93A

MP 15.150 to MP 18.850

18.50 lane milesSH7B

MP 49.506 to MP 50.639

4.52 lane milesSH7C

MP 52.490 to MP 55.160

15.90 lane milesUS36B

MP 34.000 to MP 37.600

10.80 lane milesSH 157A

MP 0.000 to MP 3.100

12.40 lane milesSH 119B (6 Lanes)

MP 44.240 to MP 45.000

4.56 lane milesUS 36E

MP 0.000 to MP 0.280

1.68 lane milesSH 119A

MP 40.757 to MP 41.770

4.08 lane miles

72.44 lane miles

x \$2,000.00 per lane mile\$144,880.00 per year payment to

The City of Boulder

\$144,880.00 per year payment x 4.75 years

\$688,180.00 total contract

**FLEXIBLE PAVEMENT PATCHING/ MINOR REPAIRS**

Patching small areas of bituminous roadway curb and ditch to correct abrupt depressions, potholes, edge failure or surface cracking, buckling, or spalling. Includes work with the small patch machine, curb machine and planning done with motor grader. All hand patching and minor curb and gutter repair of bituminous material to be shown under this activity.

**RIGID PAVEMENT PATCHING/ MINOR REPAIRS**

Patching small areas of concrete roadway, curb and ditch to correct abrupt depressions, potholes, edge failure or surface cracking, buckling, or spalling. Includes patching of P.C.C. pavement with bituminous concrete. All hand patching and minor curb and gutter repair of concrete material to be shown under this activity.

**CRACK SEALING FLEXIBLE PAVEMENT- HAND**

Deterioration of bituminous pavement due to excessive cracking and spalling. Cleaning and filling cracks in roadway surface with crack filler material to prevent spalling and entry of water and debris.

**CRACK & JOINT SEALING RIGID PAVEMENT-HAND**

Deterioration of concrete pavement due to excessive cracking, spalling and joint failure. Cleaning and filling cracks and joints in roadway surface with crack and joint filler material to prevent spalling and e of water and debris. Includes routing joints, and replacement of backer rods and joints.

**BASE STABILIZATION AND REPAIR**

Removal and replacement of base and surface material using premixed bituminous material and/or required base material to correct severe cracking, upheavals, and base failures. Includes raising and leveling concrete slabs by mud jacking.

**FENCE, GATE, CATTLEGUARD CLEANING & MAINTENANCE**

Repair, replace or install fence, cattle guards and gates located on or within the Right-of-Way limits. Clean dirt, vegetation or debris from fence line. Also includes any fence taken down and not replaced (with landowner consent, if applicable).

**SINGLE POST SIGN -INSTALLATION, MAINTENANCE & REPLACEMENT**

Install, replace or repair signs and signpost damaged by accident, vandalism or deterioration. Includes single-posted outdoor advertising sign, mailbox repair, and all breakaway features on signs. Report to this Activity when new signs are being installed where none previously existed or when removing single-posted outdoor advertising signs.

**MULTI POST SIGN -INSTALLATION, MAINTENANCE & REPLACEMENT**

Install, replace or repair signs and signpost damaged by accident, vandalism or deterioration. Includes two or more posted outdoor advertising sign, mailbox repair, and all breakaway features on signs. Report to this Activity when new signs are being installed where none previously existed or when removing multi-posted outdoor advertising signs.

**DELINEATOR, REFERENCE POST INSTALLATION, MAINTENANCE & REPLACEMENT**

Install, straighten, paint, clean or replace delineator posts, reflectors, or reference posts to maintain desired traffic control. Includes the posts for delineators and reference posts (mile marker posts) and guardrail and median barrier delineation.

**METAL GUARD RAIL MAINTENANCE, INSTALLATION, STRAIGHTENING**

New installation, repair, replace, clean or remove rail sections, SRT or Safety end treatments, post and hardware damaged by accident, vandalism or normal deterioration. Includes damaged metal guardrail with straightening machine. (NOT APPLICABLE TO THIS SCOPE)

**CONCRETE GUARDRAIL MAINTENANCE & INSTALLATION**

Repair, installation and maintenance of all concrete guardrail. (NOT APPLICABLE TO THIS SCOPE)

**BRIDGE/ STRUCTURE PAINTING**

Painting of all structural members and railings to prevent deterioration. This will include the preparation for painting. Also includes painting done to cover graffiti.

**SNOW REMOVAL & TRACTION APPLICATION (SANDING, DEICERS)**

Removing snow, ice and slush from the roadway, shoulders and ramps; plowing or blading with trucks or graders to keep roads open and reduce weather related hazardous driving conditions, including the application of chemicals and abrasives to continuous sections or roadway or isolated spots

**EXHIBIT B – LOCAL AGENCY RESOLUTION**

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

**EXHIBIT C - SAMPLE OPTION LETTER****SAMPLE IGA OPTION LETTER****Highway or Traffic Maintenance****(This option has been created by the Office of the State Controller for CDOT use only)**

|              |                           |                          |                  |
|--------------|---------------------------|--------------------------|------------------|
| <b>Date:</b> | <b>State Fiscal Year:</b> | <b>Option Letter No.</b> | <b>Routing #</b> |
|--------------|---------------------------|--------------------------|------------------|

**Vendor name:****1) SUBJECT:**

Change in the amount of goods within current term.

**2) REQUIRED PROVISIONS:**

In accordance with Section 17 of contract routing number insert FY, agency code & routing #, between the State of Colorado, Department of Transportation, and insert Local Agency name the state hereby exercises the option to an increase/decrease in the amount of goods/services at the same rate(s) specified in Exhibit A.

The amount of the current Fiscal Year contract value (encumbrance) is increased/decreased by \$ amount of change to satisfy services/goods ordered under the contract for the current fiscal year insert fiscal year. The Contract Encumbrance Amount in Recital 1 is hereby modified to \$amount of new annual encumbrance, and Section 4, B, 1 shall also be modified to show the annual not to exceed amount to \$amount of new annual encumbrance and the Contract (five-year term) not to exceed amount shall be modified to \$amount of the new five-year maximum.

The total contract value to include all previous amendments, option letters, etc. is \$insert accumulated/total encumbrance amount.

**3) EFFECTIVE DATE:**

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

**APPROVALS:****State of Colorado:****JARED S. POLIS, GOVERNOR**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Stephen Harelson, P.E., Chief Engineer, 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. Local Agency is not authorized to begin performance until such time. If Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay Local Agency for such performance or for any goods and/or services provided hereunder.**

**State Controller**  
**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_

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

Form date: August 16, 2013

**EXHIBIT D – SAMPLE ENCUMBRANCE LETTER****ENCUMBRANCE LETTER**

|                            |   |   |                                 |
|----------------------------|---|---|---------------------------------|
| Date: <input type="text"/> | State Fiscal Year: <input type="text"/> | Encumbrance Letter No. <input type="text"/> | Routing #: <input type="text"/> |
|                            |   | Orig. IGA: <input type="text"/>             | PO: <input 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: \_\_\_\_\_

Stephen Harelson, 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: \_\_\_\_\_