

RESOLUTION NO. 36-13

A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) TO PERFORM TRAFFIC MAINTENANCE SERVICES ON STATE HIGHWAYS

RECITALS:

The State has certain legal obligations to maintain State highways in and through the City. To maximize its efficiency and effectiveness, the State has proposed a contract whereby the City will provide operation and maintenance of traffic control devices on State highways within the City limits as described in the contract. The State will pay a reasonable, negotiated fixed rate totaling \$193,752.53 annually.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO, that:

- a. The City Council hereby authorizes the City Manager to sign the Traffic Maintenance Contract with the Colorado Department of Transportation.
- b. The City Council hereby authorizes the expenditure of funds and the commitment of resources, as necessary, to meet the terms and obligations of the agreement.
- c. This resolution shall be in full forces and effect from the date on which it is signed.


PASSED AND ADOPTED this 5th day of June, 2013

CITY OF GRAND JUNCTION, COLORADO

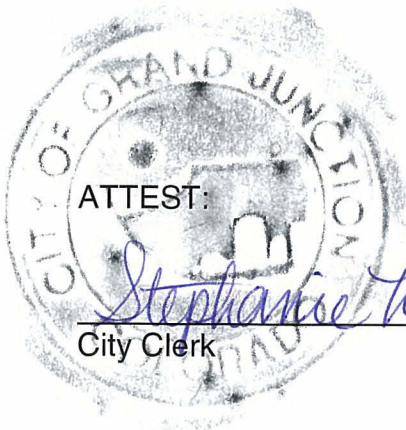


President of the Council

ATTEST:



City Clerk



CONTRACT

THIS CONTRACT is 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 and City of Grand Junction, 333 West Avenue, Bldg. D, Grand Junction, Colorado 81501, CDOT Vendor #: 2000027, hereinafter referred to as the "Local Agency" or "Contractor."

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function 2000, GL Acct. 4541000020, Cost Centers R3830-010 (Signs and Signals) and R3820-010 (Markings and Stripings).

(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; and;

4. The parties desire to enter into this Contract for the Contractor to provide some or all of the certain 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; and

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

Contractor's statements, as provided herein.

1. The State shall pay the Contractor for the satisfactory operation and maintenance of traffic control devices under this contract at the rates described in **Exhibit C**, which is attached hereto and made a part hereof. Provided, however, that the total charges to be paid by the State during each fiscal year beginning July 1 and ending June 30 of the following year shall not exceed a maximum amount of **\$193,752.53** without the execution of a formal amendment prior to any such excess charges being incurred. The maximum contract total shall not exceed the cumulative five-year total of **\$968,762.66**. Contractor billings and State payments for each of the traffic control devices listed in **Exhibit A** shall be on a "lump sum" basis, in accordance with the rates described in **Exhibit C**, subject to the maximum amount described above. The Contractor will bill the State monthly and the State will pay such bills within 60 days.
2. The statements submitted by the Contractor 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 section of the Highways such services were performed, in accord with standard Contractor billing standards.
3. If the Contractor fails to satisfactorily perform the maintenance for a segment of the Highways (or portion thereof), or if the statement submitted by the Contractor 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 and Local Agency Commitments

- A. The Contractor shall perform the "highway maintenance services" for the certain State Highway System segments described herein. Such services and highways are detailed in Section 1 (or **Exhibit A**).
- B. The Contractor shall operate and maintain the specific traffic control devices, and at the particular locations, all as listed on **Exhibit A**, in a manner that is consistent with current public safety standards on state highways within its jurisdictional limits, and in conformance with applicable portions of the "Manual on Uniform Traffic Control Devices" and the "Colorado Supplement" thereto, which are referred to collectively as the "Manual" and which are incorporated herein by reference as terms and conditions of this Contract. The Contractor shall provide all personnel, equipment, and other services necessary to satisfactorily perform such operation and maintenance.
- C. The Parties shall have the option to add or remove specific traffic control devices to the list shown in **Exhibit A** and, therefore, amend the Work to be performed by the Contractor under this Contract. The Parties may modify **Exhibit A** by formal amendment during the renewal period for the following Fiscal Year, or the State may unilaterally modify **Exhibit A** by written notice to the Local Agency using an option letter substantially equivalent to **Exhibit E**.
- D. The Contractor shall perform all maintenance services on an annual basis. The Contractor's performance of such services shall comply with the same standards that are currently used by the State for the State's performance of such services, for similar type highways with similar use, in that year, as determined by the State. The State's Regional Transportation Director, or his

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 3, Traffic, 222 South 6th Street, Room 100, Grand Junction, Colorado, 81501. 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 3 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:

Zane Znamenacek, PE III
CDOT Region 3, Traffic
222 South 6th Street, Room 100
Grand Junction, Colorado 81501
970-683-6275

If to the Local Agency:

Jody Kliska
City Transportation Engineer
City of Grand Junction
333 West Avenue, Building D
Grand Junction, Colorado 81501
970-244-1591

Section 10. Successors

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

Section 11. Third Party Beneficiaries

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

Section 12. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 13. Severability

To the extent that this contract may be executed and performance of the obligations of the parties

C. Option Letter

a. The State may increase the quantity of goods/services described in Exhibit A at the unit prices established in the contract. The State may exercise the option by written notice to the Local Agency in a form substantially equivalent to **Exhibit E**. Delivery/performance of the goods/services shall continue at the same rate and under the same terms as established in the contract.

b. The State may also unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices established in the contract and the schedule of services required, as set by the state. The State may exercise the option by providing a fully executed option to the Local Agency, in a form substantially equivalent to **Exhibit E**, immediately upon signature of the State Controller or his delegate. Performance of the service 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 supercede other agreements

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

Section 20. Subcontractors

The Contractor may subcontract for any part of the performance required under this Contract, subject to the Contractor first obtaining approval from the State for any particular subcontractor. The State understands that the Contractor may intend to perform some or all of the services required under this Contract through a subcontractor. The Contractor 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 22. Special Provisions

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

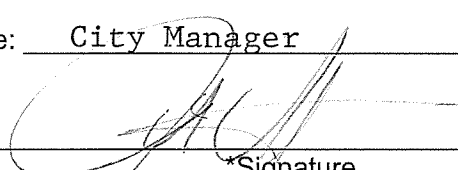
1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds 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

SIGNATURE PAGE

Agreement Routing Number 14 HA3 56308

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 style="text-align: center;">THE LOCAL AGENCY CITY OF GRAND JUNCTION</p> <p>Print: <u>Rich Englehart</u></p> <p>Title: <u>City Manager</u></p> <p style="text-align: center;"> _____ *Signature</p> <p>Date: <u>6/10/13</u></p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</p> <p style="text-align: center;">_____ By: Timothy J. Harris, P.E., Chief Engineer</p> <p style="text-align: center;">Date: _____</p>
<p style="text-align: center;">2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p style="text-align: center;">_____ *Signature</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.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Transportation</p> <p>Date: _____</p>

Signs

All signs and delineators in the highway segments listed below (including panels, posts, bases, and hardware) shall be maintained and repaired as follows:

Highway	From	To	Length	Description
50A	32.00	34.75	2.75	Begin to 27.75 Rd, all FR
6A	-0.50	end	0.50	Last 0.5 mile of 6A to 21.5 Rd
70B	0.00	7.90	7.90	Begin to 28.5 Rd
70Z	0.00	1.27	1.27	All
70A 24 Rd overpass	0.00	0.25	0.25	All w/in CDOT ROW
70A 25 Rd overpass	0.00	0.25	0.25	All w/in CDOT ROW
70AF North 25 to 26 Rd	0.00	1.00	1.00	All w/in CDOT ROW
70A 26 Rd overpass	0.00	0.25	0.25	All w/in CDOT ROW
70A 26.5 Rd overpass	0.00	0.25	0.25	All w/in CDOT ROW
70AF 26.5 Rd	0.00	0.25	0.25	All w/in CDOT ROW
70A 27 Rd overpass	0.00	0.25	0.25	All w/in CDOT ROW
70A Horizon Dr underpass	0.00	0.25	0.25	All w/in CDOT ROW
70AF north at 29 Rd	0.00	0.25	0.25	All w/in CDOT ROW
70A 29 Rd overpass	0.00	0.25	0.25	All w/in CDOT ROW
		Total	15.67	

Overhead sign panels and structures will continue to be maintained by CDOT.

Signs include all traffic control signs under the responsibility of CDOT as per CRS 43-2-135, including traffic control signs within State ROW but intended for a side street.

CDOT will continue to conduct cyclical replacement of sign panels and upgrade of existing posts and bases on an appropriate annual cycle to maintain acceptable condition in accordance with current standards and practices.

Maintenance shall include repair of damaged delineators and class I and II sign panels and associated posts, hardware, etc. due to weather, vehicle crashes, or other causes.

Repair of damaged signs shall be done within one calendar day of notification or discovery of damage for stop and yield signs, three calendar days for regulatory and warning, and seven calendar days for guide, motorists' service, and other special signs.

New installs shall be reviewed and approved by CDOT and shall meet all applicable CDOT and Contractor standards and guidelines. A determination of who will provide labor, material, and equipment for the installation will be made on a case-by-case basis between the aforementioned contract representatives.

A once per year random inspection of 5% of inventory shall be done jointly between CDOT and the Contractor to ensure compliance.

Payment: Please refer to Exhibit C.

Signals

All traffic control signals listed below shall be maintained and operated as follows:

Business Loop 70

I-70B @ 28 Rd.
I-70B @ Main St.
Main St. @ 1st St.
Rood Ave. @ 1st St.
Pitkin Ave. @ 4th St.
Pitkin Ave. @ 5th St.
Pitkin Ave. @ 6th St.
Pitkin Ave. @ 7th St.
Pitkin Ave. @ 9th St.
Ute Ave. @ 12th St.
Ute Ave. @ 9th St.
Ute Ave. @ 7th St.
Ute Ave. @ 6th St.
Ute Ave. @ 5th St.
Ute Ave. @ 4th St.
Grand Ave @ 1st St.
I-70B @ Independent Ave.
I-70B @ Teller Ave

Business Loop 70

I-70B @ Ouray Ave.
I-70B @ 25 Rd.
I-70B @ 24 1/2 Rd.
I-70B @ 24 3/4 Rd.
I-70B @ Mesa Mall
I-70B @ 23 Rd.

Highway 50

Hwy 50 @ Unaweep Ave.
Hwy 50 @ 27 Rd.

I-70 Off-Ramps

I-70 @ Hwy 6 WB Off-Ramp
I-70 @ Hwy 6 EB Off-Ramp
I-70 @ Horizon Dr. WB Off-Ramp
I-70 @ Horizon Dr. EB Off-Ramp

Highway 6

006A @ 22 Road

Periodic Preventative Maintenance Checks

The following items shall be checked on every signal under this contract at least semi-annually for proper operation (Conflict Monitor, Heads, Lenses, Detection, Structure, Hardware, Caisson, Controller, Communications and Lighting).

Timing

Signal timing shall be kept updated with timing based upon current traffic volumes at least every 4 years. Timing shall meet CDOT's State Highway Access Code for progression, CRS 42-4-602, and CDOT and industry practices for performance.

Emergency Maintenance and Repair

The Contractor shall be responsible for emergency response, emergency signal operation, and repair of damage. Contractor shall respond to traffic signal failures and malfunctions within the following timelines.

- Signal power outage – immediate response and appropriate emergency operation, repair as soon as practicable.
- Malfunctioning signal – immediate response and interim operation, repair as soon as practicable.
- Protected phases and red head outage – immediate repair.
- Pedestrian heads – repair within two days.
- Permitted phase and non-red head outage – repair within three days.

EXHIBIT B - RESOLUTION

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION**

EXHIBIT D – ENCUMBRANCE LETTER

SAMPLE ENCUMBRANCE LETTER

Date:	State Fiscal Year:	Encumbrance Letter No.	Routing #
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- 1) Encumber fiscal year funding in the contract.**
- 2) PROVISIONS:** In accordance with Section(s) _____ of the original Contract routing number _____ between the State of Colorado, Department of Transportation, and [*Contractor's Name*], covering the term [*Insert Orig start date*] through [*Insert Current ending date*], the State hereby encumbers funds for the goods/services specified in the contract for fiscal year _____.

The amount of the current Fiscal Year encumbrance is [*\$ amount of change*] bringing the total actual encumbrance for the contract to [*Insert New \$ Amt*] as consideration for services/goods ordered under the contract for the current fiscal year _____.

Requisition #	CDOT Document #	Doc Line #	WBS or Fund Center #	Change Amount

The total contract actual encumbered value including all previous amendments, option letters, encumbrance letters, etc. is [*Insert New \$ Amt*].

- 3) EFFECTIVE DATE.** The effective date of this Encumbrance Letter is upon approval of the State Controller or July 1, 20 _____, whichever is later.

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
 Department of Transportation

By: _____
 (For) Donald E. Hunt, 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: _____