

CITY OF GRAND JUNCTION, CO

RESOLUTION NO. 03-10

**A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF GRAND JUNCTION AND THE COLORADO DEPARTMENT
OF TRANSPORTATION (CDOT) REGARDING I-70 B and 29 ROAD INTERCHANGE**

RECITALS:

On February 2, 2006, the Finding of No Significant Impact which is the decision document for the Environmental Assessment was signed by CDOT. The 1601 process requires the applicant to enter into an Intergovernmental Agreement for the construction and maintenance of the facility.

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

- a. The agreement attached hereto outlines construction and maintenance responsibilities is authorized and approved.
- b. Approval of the agreement authorizes the expenditure(s) as provided by the agreement and for the purposes of the agreement.

PASSED AND ADOPTED this 4th day of January, 2010

CITY OF GRAND JUNCTION, COLORADO

/s/: Bruce Hill
President of the Council

ATTEST:

/s/: Stephanie Tuin
City Clerk

LA \$ CDOT WORK)
PROJECT M555-028 (17449)
REGION 3 (DAW)

10 HA3 02639
ID 331000281

INTER-GOVERNMENTAL AGREEMENT (IGA)
CONTRACT

THIS CONTRACT made this ____ day of _____ 2009, 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 GRAND JUNCTION, 250 N. 5th Street Grand Junction, Colorado 81501, CDOT Vendor #2000027 hereinafter referred to as the "Contractor" or the "Local Agency."

RECITALS

1. Authority exists in the law and Local Agency 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 3301, WBS Element 17449.10.30 Phase ii C
CDOT Contract Encumbrance Amount:
\$0.00

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. The Local Agency anticipates a project for the construction and Interchange Improvement Project; at the interchange at I-70 B and 29 Road in the City of Grand Junction, 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, 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. CDOT desires to perform the Work described in form #463, as it may be revised.

5. The Local Agency has made funds available for Project CC M555-028 (17449) which shall consist of a lump sum contribution for the cost of the CDOT oversight and review of the Fabrication Inspection and Construction Inspections for the I-70 B & 29 Road Intersection Improvements, referred to as the "Project" or the "Work." Such Work will be performed in the City of Grand Junction, Colorado, as specifically described in Exhibit A.

The Work performed under this Agreement is in conjunction with the previously executed 1601 Intersection Agreement IGA between CDOT and The City of Grand Junction, as contained in Contract Routing # 05 HA3 00062 dated October 31, 2005 which is hereby incorporated by reference.

6. The Local Agency has funds available and desires to provide \$158,351.00 in funding for the ‘Work’.

7. CDOT has estimated the cost of the Work, and the Local Agency is prepared to provide funding required 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 expend agency funds for the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as Exhibit B.

8. 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.

9. The parties hereto desire to agree upon the division of responsibilities with regard to the project.

10. 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.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of the CDOT oversight of the Fabrication Inspection and Construction Inspection for the I-70 B and 29 Road Interchange Improvement Project at I-70 B and 29 Road, referred to as the “Project” or the “Work.” Such Work will be performed in the City of Grand Junction, 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. This contract
2. Section 1 (Scope of Work)
3. Exhibit C (Option Letter)
4. 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 and the Local Agency.

Section 4. Project Funding Provisions

A. The CDOT has estimated the total cost of the work and the Local Agency is prepared to provide 100% of the 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 expend its funds for the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as Exhibit B.

B. The CDOT has estimated the total cost of the work and the Local Agency is prepared to provide 100% of the funding for the project in the amount of: \$158,351.00 which is to be funded as follows:

Fabrication Inspections for girders and Structures:	\$97,818.00
Construction Inspection on the structure over I-70B on CDOT Right of Way & Union Pacific Railroad Right of Way:	<u>\$60,533.00</u>
Total:	\$158,351.00

1. Local Agency Funds \$ 158,351.00
2. **Total Funds:** **\$ 158,351.00**

C. The maximum amount payable by the Local Agency under this contract shall be \$158,351.00, unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. 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.

D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from the Local Agency 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.

Section 5. Project Payment Provisions

A. The Local Agency will reimburse the State for incurred costs relative to the project following the Local Agency's review and approval of such charges, subject to the terms and conditions of this contract.

B. 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.

C. The State will prepare and submit to the Local Agency, no more than monthly, charges for costs incurred relative to the project. The State's invoices shall include a description of the amount of services performed, the dates of performance and the amount and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format.

Section 6. State and Local Agency Commitments

The Local Agency is the "Responsible Party" referred to in this contract. The Local Agency Contract Administration Checklist, Exhibit D is not applicable to this Agreement.

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.
- 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.

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 CDOT and FHWA requirements.

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.

2. If the State is the responsible party: {not applicable to this contract}

- a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the State Agency Project Engineer (SAPE), to perform that administration. The SAPE 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, the State shall, in conjunction with the Local Agency, advertise the call for bids and upon concurrence by the Local Agency will award the construction contract(s) to the low responsive, responsible bidder(s).

- (1) in advertising and awarding the bid for the construction of a federal-aid project, the State shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the State/contractor shall incorporate Form 1273 (Exhibit H) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).
- (2) the Local Agency has the option to concur or not concur in the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare its concurrence or non-concurrence within 3 working days after said bids are publicly opened.
- (3) 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.

- c. If all or part of the construction work is to be accomplished by State personnel (i.e. by force account), rather than by a competitive bidding process, the State 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.

Section 7. ROW Acquisition and Relocation {not applicable}

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing 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 federal and state statutes, regulations, CDOT policies and procedures, 49 CFR Part 24, the government wide Uniform Act regulation, the FHWA Project Development Guide and CDOT's Right of Way Operations Manual.

Allocation of Responsibilities can be 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 Operation Manual.

The manual is located at http://www.dot.state.co.us/ROW_Manual/.

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 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:

1. 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.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 10. Environmental Obligations

The State and 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 FHWA. 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 will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 12. Federal Requirements

The State and/or their contractor shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. The contractor shall also require compliance with these statutes and regulations in sub grant agreements permitted under this contract.

Section 13. Record Keeping

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

Section 14. 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 State is to be paid, reimbursed, or otherwise compensated with federal and/or Local Agency funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the State 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 either party may immediately

terminate or amend this contract.

Section 15. 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 16. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 3, 222 S. 6th Street Grand Junction, CO 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 the State:
Craig Snyder, PE
CDOT Region 3
Resident Engineer
606 S. 9th Street
Grand Junction, CO 81501
(970) 683-6351

If to the Local Agency:
Jim Shanks
Project Manager
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501
(970) 244-1543

Section 17. 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 18. 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 19. 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 the local agency liability for claims for injuries to persons or property arising out of negligence of the State 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 20. 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 21. 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 22. 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 23. 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 24. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal, State or local 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 25. Option Letters

Option Letters may be used to extend Agreement term, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. **These options are 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. Following are the applications for the individual options under the Option Letter form:

Option 1 - Option to extend or renew (this option applies to Highway and Signal maintenance contracts only). In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to one (1) year. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements. This extension shall terminate at the end of the one (1) year period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate. The State may exercise this option by providing a fully executed option to the contractor, within thirty (30) days prior to the end of the current contract term, in a form substantially equivalent to **Exhibit C**. If the State exercises this option, the extended contract will be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

Option 2 – Level of service change within current term due to unexpected overmatch in an overbid situation only. In the event the State has contracted all project funding and the Local Agency's construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding.

The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (**Exhibit C**), which will bring the maximum amount payable under this contract to the amount indicated in Section 4. Project Funding Provisions attached to the executed Option Letter. Performance of the services shall continue under the same terms as established in the contract. *The State will use the Financial Statement submitted by the Local Agency for "Concurrence to Advertise" as evidence of the Local Agency's intent to award and it will also provide the additional amount required to exercise this option.* If the State exercises this option, the contract will be considered to include this option provision.

Option 3 – Option to add overlapping phase without increasing contract dollars. The State may require the contractor 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 **Section 1, (Scope of Work)** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial

targeted start date of the phase, in a form substantially equivalent to **Exhibit C**. If the State exercises this option, the contract will be considered to include this option provision.

Option 4 - To update funding (increases and/or decreases) with a new Section 4. Project Funding Provisions. This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding contained therein.

The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in Section 4. Project funding Provisions, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit C**. If the State exercises this option, the contract will be considered to include this option provision.

Section 26. Disadvantaged Business Enterprise (DBE)

The Local Agency will comply with all requirements of Exhibit E and the Local Agency Contract Administration Checklist 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 27. 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 28. Single Audit Act Amendment

All state and local government and non-profit organization Sub-Grantees receiving more than \$500,000 from all funding sources, that are defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements that apply to Sub-Grantees receiving federal funds are as follows:

- a) If the Sub-Grantee expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.
 - b) If the Sub-Grantee expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.
 - c) If the Sub-Grantee expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.
 - d) Single Audit can only be conducted by an independent CPA, not by an auditor on staff.
 - e) An audit is an allowable direct or indirect cost.

Section 29. Statewide Contract Management System

**** NOT APPLICABLE TO THIS AGREEMENT ****

If the maximum amount payable to Local Agency under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§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 30.

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

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

LOCAL AGENCY:

STATE OF COLORADO:
BILL RITTER, JR., GOVERNOR

CITY OF GRAND JUNCTION
Legal Name of Contracting Entity

By _____
Executive Director
Department of Transportation

200002
CDOT Vendor Number

Signature of Authorized Officer

LEGAL REVIEW:

JOHN W. SUTHERS
ATTORNEY GENERAL

Print Name & Title of Authorized Officer

By _____

LOCAL AGENCY:
(A Local Agency Attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:
DAVID J. MCDERMOTT, CPA

By _____

Date _____

FORM 463
or
SCOPE OF WORK

Exhibit B

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

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 cannot be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
-------	--------------------	-------------------	----------------

Contractor / Local Agency : _____

A. SUBJECT: (Choose applicable options listed below **AND** in section B and delete the rest)

- 1. Option to renew (for an additional term) applies to Highway and Signal maintenance contracts ONLY; this renewal cannot be used to make any change to the original scope of work;**
2. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
3. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
4. Option to update funding (a new Section 4. Project Funding Provisions must be referenced with the option letter and shall be labeled Revision 1 to Section 4. Project Funding Provisions (future changes for this option shall be labeled as follows: Revision 2, etc.)

B. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

(Insert the following language for use with Options #1):

In accordance with Paragraph(s) _____ of contract routing number *(insert FY, Agency code, & CLIN routing #)*, between the State of Colorado, Department of Transportation, and *(insert contractor's name)* the state hereby exercises the option for an additional term of *(insert performance period here)* at a cost/price specified in Paragraph/Section/Provision _____ of the original contract, AND/OR an increase in the amount of goods/services at the same rate(s) as specified in Paragraph _____ of the original contract.

(Insert the following language for use with Option #2):

In accordance with the terms of the original contract *(insert FY, Agency code & CLIN routing #)* between the State of Colorado, Department of Transportation and *(insert contractor's name here)*, the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The contract is now increased by *(indicate additional dollars here)* specified in Paragraph/Section/Provision _____ of the original contract.

(Insert the following language for use with Option #3):

In accordance with the terms of the original contract *(insert FY, Agency code & CLIN routing #)* between the State of Colorado, Department of Transportation and *(insert contractor's name here)*, the State hereby exercises the option to add an overlapping phase in *(indicate Fiscal Year here)* that will include *(describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*. Total funds for this contract remain the same *(indicate total dollars here)* as referenced in Paragraph/Section/Provision/Exhibit _____ of the original contract.

(Insert the following language for use with Option #4):

In accordance with the terms of the original contract *(insert FY, Agency code & CLIN routing #)* between the State of Colorado, Department of Transportation and *(insert contractor's name here)*, the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds.

The contract is now *(select one: increased and/or decreased)* by *(insert dollars here)* specified in Paragraph/-Section/-Provision/Exhibit _____ of the original contract. A new Section 4. Project Funding Provisions is made part of the original contract and replaces the original Section 4. Project Funding Provisions.

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

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ *amount of change*) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ _____).

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

APPROVALS:

For the Contractor / Local Agency :

Legal Name of Contractor / Local Agency

By: _____
Print Name of Authorized Individual

Signature: _____

Date: _____

Title: Official Title of Authorized Individual

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____
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
David J. McDermott, CPA

By: _____

Date: _____ Issuance date: July 1, 2008

Exhibit D

****NOT APPLICABLE TO THIS AGREEMENT****

LOCAL AGENCY
CONTRACT ADMINISTRATION
CHECKLIST

CDOT Form 1243