

(FMLAWRK)  
PROJECT AQC M320-051, (16265)  
Region 6, (JH/DW)

AMD#1 Routing # 10 HA6 10720  
PO# 271000603

07-882-A

**CONTRACT AMENDMENT #1**

THIS AMENDMENT, is made this \_\_\_\_ day of \_\_\_\_\_, 2010, 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 the CITY AND COUNTY OF DENVER, STATE of COLORADO, 201 West Colfax Avenue, Dept 611, Denver, CO 80202, CDOT Vendor #:2000018, hereinafter referred to as the Local Agency, or the contractor.

**FACTUAL RECITALS**

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for this Project as set forth below; and,
2. Required approval, clearance, and coordination has been accomplished from and with appropriate agencies; and,
3. The Parties entered into the contract dated December 10, 2007, routing number 08 HA6 00028, known hereafter as "the Basic Contract"; and,
4. The Basic Contract is an intergovernmental agreement between the State and the Contractor consisting of the design and construction of an ADA compliant at-grade bicycle and pedestrian crossing of the UPRR at 47<sup>th</sup> Avenue and York Street, including the addition of bicycle parking racks and a trail along York Street in the vicinity of the crossing in Denver, Colorado; and,
5. The Basic Contract is still in effect and provides for changes to its terms and conditions by written supplement or contract amendment; and,
6. The Parties also now desire to amend the Basic Contract to modify the funding by adding \$32,919.00 in funding to the project for a new contract encumbrance of \$355,000.00 by revising Recital 1 and Exhibit C, and to replace contract modification clause, and Exhibit F (Funding Letter) with Sample Option Letter and to update the Special Provisions; and,
7. The Parties enter into this Amendment pursuant to the provisions of Colorado Revised Statutes, Sections 24-30-1401 et seq., Section 43-1-106, and Section 43-1-110, as amended.

**NOW THEREFORE, it is hereby agreed that:**

Consideration for this Amendment consists of the payments that shall be made pursuant to this Amendment and the promises and agreements herein set forth.

1. This Amendment is supplemental to the Basic Contract, which is, by this reference, incorporated herein and made a part hereof, and all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this Amendment as though they were expressly rewritten, incorporated, and included herein.
2. The Basic Contract is and shall be modified, altered, and changed in the following respects only:
  - a. Recital Number 1 shall be amended to read as follows:

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, Functions 3020 and 3301, GL Acct. 4231200011, WBS Elements 16265.10.30 and 16265.20.10, (Contract Encumbrance Amount: Design-\$355,000.00, Construction-\$0.00, **Contract Encumbrance Amount \$355,000.00**

- b. Exhibit C to the Basic Contract shall be removed and replaced in its entirety by Exhibit C-1, which is attached hereto and incorporated herein by this reference. All references in the Basic Contract to Exhibit C shall be removed and replaced by Exhibit C-1, as appropriate.
    - c. Exhibit F (Funding Letter) shall be removed and replaced with the Sample IGA Option Letter (attached) and the corresponding language in Section 25 shall be removed and replaced in its entirety by the following:

**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 F**. 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 F**), which will bring the maximum amount payable under this contract to the amount indicated in Exhibit C-1 attached to the executed Option Letter (future changes to Exhibit C shall be labeled as C-2, C-3, etc., as applicable). 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 **Exhibit A** 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 F**. 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 Exhibit C.** 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 exhibit (Exhibit C) in the Original Contract with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc).

The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in Exhibit C- 1, 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 F**. If the State exercises this option, the contract will be considered to include this option provision.

- d. The Special Provisions to the Basic Contract shall be removed and replaced in its entirety by the following:

## 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 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(6), 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 AND COUNTY OF DENVER  
Legal Name of Contracting Entity

By: \_\_\_\_\_  
For the Executive Director  
Colorado Department of Transportation

20000018  
CDOT Vendor #

Date \_\_\_\_\_

**LEGAL REVIEW:  
JOHN W. SUTHERS, ATTORNEY GENERAL**

\_\_\_\_\_  
JOHN W. HICKENLOOPER, Mayor

By \_\_\_\_\_

**LOCAL AGENCIES:  
(A Local Agency seal or attestation is required.)**

Attest (Seal) By \_\_\_\_\_  
**STEPHANIE Y. O'MALLEY**  
Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

**APPROVED AS TO FORM:**  
City Attorney for the  
CITY AND COUNTY OF DENVER

**RECOMMENDED AND APPROVED:**

By \_\_\_\_\_  
Assistant City Attorney

By Robert A. Walker  
Manager of Public Works

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
Manager of Finance

**CONTRACT CONTROL NUMBER:** RC73032(1)

By: \_\_\_\_\_  
Dennis Gallagher, Auditor

**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. MC DERMOTT, CPA**

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

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

- A. The Local Agency has estimated the total cost of the Project to be \$390,000.00, which is to be funded as follows:

|   |        |      |                     |
|---|--------|------|---------------------|
| <b>BUDGETED FUNDS (Projects 16265 and 17150)</b>            |        |      |                     |
| a. Federal Funds (FY 09 Enhancement @ 80%)                  |        |      | \$284,000.00        |
| b. Local Agency Matching Funds (FY 09 Enhancement @ 20%)    |        |      | \$71,000.00         |
| c. Local Agency Overmatch for CDOT-Incurred Costs           |        |      | \$35,000.00         |
| <b>TOTAL BUDGETED FUNDS</b>                                 |        |      | <b>\$390,000.00</b> |
| <b>2 ESTIMATED CDOT-INCURRED (Project 17150)</b>            |        |      |                     |
| a. Federal Share (0%)                                       |        |      | \$0.00              |
| b. Local Share (100% from Local Agency Overmatch)           |        |      | \$35,000.00         |
| <b>TOTAL ESTIMATED CDOT-INCURRED COSTS</b>                  |        |      | <b>\$35,000.00</b>  |
| <b>3 ESTIMATED PAYMENT TO LOCAL AGENCY</b>                  |        |      |                     |
| a. Federal Funds Budgeted (1a)                              |        |      | \$284,000.00        |
| b. Less Estimated Federal Share of CDOT-Incurred Costs (2a) |        |      | \$0.00              |
| <b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>              |        |      | <b>\$284,000.00</b> |
| <b>4 FOR CDOT ENCUMBRANCE PURPOSES</b>                      |        |      |                     |
| Federal Share   |        |      | \$284,000.00        |
| Local Agency Share  |        |      | \$71,000.00         |
| Net to be encumbered as follows:                            |        |      | \$355,000.00        |
| WBS Element 16265.10.30                                     | Design | 3020 | \$355,000.00        |
| WBS Element 16265.20.10                                     | Const  | 3301 | \$0.00              |

- B. The matching ratio for the federal participating funds for this project is 80% federal-aid funds (CFDA #20 2050) to 20% Local Agency funds, it being understood that such ratio applies only to the \$355,000.00 (\$284,000.00 Federal Funds and \$71,000.00 Local Agency Matching Funds) that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$355,000.00, and additional federal funds are made available for the project, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the local agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$355,000.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.
- C. The maximum amount payable to the Local Agency under this contract shall be \$284,000.00. For CDOT accounting purposes, the federal funds of \$284,000.00 and local matching funds of \$71,000.00 will be encumbered for a total encumbrance of \$355,000.00 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 federal and/or state and/or Local Agency sources, as applicable. Should these sources, either federal or Local Agency, 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.
- E. The Local Agency understands and accepts that future reimbursement of the Federal funding for the Project is contingent upon the FHWA making such funds available to the State in future fiscal years, and to the budgeting of such funds by the Transportation Commission for reimbursement to the Local Agency. The Local Agency understands that the FHWA has *not* currently obligated all Federal funds for the project. The Local Agency does not by this Agreement irrevocably pledge present case reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency.

## SAMPLE IGA OPTION LETTER

*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 # |
|-------|--------------------|-------------------|----------------|

Local Agency name: \_\_\_\_\_

**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 Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

**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 Exhibit C-1 is made part of the original contract and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)



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

The 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 Local Agency:**

Legal Name of 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: \_\_\_\_\_  
For the 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: Controller Signature