

AGREEMENT

THIS AGREEMENT, by and between the State of Colorado, for the use and benefit of the Colorado Department of Transportation (“State” or “CDOT”) and BOULDER COUNTY, 2525 13th Street, Suite 203, Boulder, Colorado, 80304, CDOT Vendor #: 2000059 (“Local Agency” or “Boulder County”), and the State and the Local Agency together shall be referred to as the “Parties” and individually as a “Party.”

PROJECT HISTORY

Parties to this Agreement have worked together to apply for State and federal funds to benefit the deliverables for various improvements along the CO 119 corridor. Parties agreed that it was strategically beneficial for Boulder County to apply for grants for the improvements, including but not limited to those identified in this Agreement. During the Project development, Boulder County initially had been identified by Denver Regional Council of Governments in its Transportation Improvement Plan (“TIP”) as the recipient of certain grant funds. Subsequently, the TIP was updated to show CDOT as the recipient of such funds. This Agreement captures the relationship of the Parties specific to the Boulder County work to be done by CDOT as Project owner, but recognizes the associated grants received by CDOT for the additional work being done independent of the Bikeway (as defined in §4) scope of work (“SOW”).

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 the Boulder County Contribution (defined below).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. §43-2-102 and 103, C.R.S require the State to maintain state highways (including where such highways extend through a city or an incorporated town), and §43-2-135, C.R.S. describes certain specific responsibilities of the State and affected local entities (respectively) with respect to state highways that are also part of a local street system.
4. Federal funds may be awarded from the American Recovery Plan (“ARPA”). These ARPA funds may be awarded pursuant to Multimodal Transportation Options Funding (“MMOF”). MMOF means money transferred from the general fund to the fund pursuant to C.R.S. §§24-75-219 (7)(a)(II) and any other money that the general assembly may appropriate or transfer to the fund. These funds are subject to an expiration date. All ARPA funds must be obligated by December 31, 2024. The funds must be expended by December 31, 2026.
5. Boulder County will provide \$1,590,000.00 (“Contribution”) in funds toward the cost of the Bikeway as more specifically set forth below.
6. This Agreement 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.
7. The Parties hereto desire to agree upon the division of responsibilities with regard to the Bikeway portion of the Project (as defined §4).

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

CDOT will perform the work specifically described in **Exhibit A (the “Bikeway”)**, and Boulder County shall provide its Contribution toward the Bikeway, in Boulder County, Colorado.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- A. This Agreement
- B. **Exhibit A** - Scope of Work
- C. **Exhibit B** - Utility Impacts of the Bikeway and Responsibilities

Section 3. Term

This Agreement shall be effective upon execution by Boulder County and the CDOT Chief Engineer or designee and shall terminate on December 31, 2038, or sooner if any of the State's funding expires, or is sooner terminated or unless performance is extended in accordance with this Agreement.

Section 4. Definitions

The following terms shall be construed and interpreted as follows:

- A. **"Actual Cost"** means the amount agreed upon for the Construction Agreed Price ("CAP") Construction Amount as it relates to the Bikeway, inclusive of any adjustments to the CAP that are made during construction and paid to the Construction Manager General Contractor ("CMGC") provider. The Actual Costs of the Bikeway include anything that is required to build the Bikeway, which includes but is not limited to:
 - construction,
 - utility relocation,
 - environmental obligations,
 - right of way ("ROW") acquisition and management,
 - construction engineering and indirect rate ("CE & Indirect Rate"), which is 26% added to all costs associated with the construction phase of the Bikeway scope of work,
 - CMGC fees (including pre-construction and construction management percentage),
 - risk pool,
 - minor contract revisions and force account,
 - Independent Cost Estimate ("ICE"), and
 - Owner's Representative.
- B. **"Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules, and cited authorities, and any future modifications thereto.
- C. **"Bikeway"** means the CO119 Bikeway portion of the Project as described in **Exhibit A**.
- D. **"Budgeted Construction Amount"** means the \$53,000,000.00 available by CDOT for Actual Costs of the Bikeway including \$1,552,000.00 of the construction portion of the Contribution for the Bikeway. Design incorporation costs are excluded from this amount.
- E. **"Contribution"** means the total funds provided by Boulder County to CDOT under this Agreement as described in §5 of this Agreement.
- F. **"Material Change"** refers to a significant or substantial alteration, modification, or development that can have a notable impact on the Bikeway.
- G. **"Plans"** means CDOT's overall design plans for the construction work of the Project.
- H. **"Project"** means the CO 119 Safety Mobility and Bikeway Project (SMBP). CDOT is the owner of the Project, which will be delivered through the use of the CMGC delivery method. This Project includes, but is not limited to, Bikeway, BRT stations, Park-n-Rides, queue bypass lanes, bikeway underpasses, and intersection improvements along the CO 119 corridor between Foothills Parkway and Hover Street.
- I. **"Working Day"** means any day the Project has construction activities operating.

Section 5. Project Funding Provisions

- A. Boulder County's total amount of its Contribution will be \$1,590,000.00, which is broken down in **§5.B and C** below. Boulder County is prepared to provide the Contribution to reimburse CDOT for certain Bikeway costs

as described herein, and as evidenced by the signing of this Agreement which expressly authorizes CDOT the authority to expend the Contribution toward the Bikeway. If any component of the Project is completed under its allocated budget, CDOT may re-allocate excess funding from the budget of the completed component to the budget for any uncompleted component of the Project, including the Bikeway. As the Project owner, CDOT reserves the right to exclusively make decisions of moving excess funds between the Project elements that are, in CDOT's opinion, in the best interest of the Project.

- B. The construction portion of the Contribution is \$1,552,000.00 for the Bikeway.
- C. The remainder of the Contribution of \$38,000.00 is to be used for combination of Bikeway design plans into overall Project Plans. This is not subject to the CE & Indirect Rate.
- D. CDOT's contribution of funds to the Project for the coordination, design, or construction of deliverables for this Bikeway scope of work is the subject of a separate agreement properly executed and approved in accordance with applicable Colorado State Law and State fiscal rules.
- E. The Parties hereto agree that this Agreement is contingent upon all funds designated herein for the Project, including the Bikeway, being made available from federal, State, and local sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, this Agreement 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 6. Project Payment Provisions

- A. Boulder County will pay to CDOT its Contribution in accordance with the payment schedule set forth below by March 31st of the corresponding year or upon execution of this Agreement, whichever is later:
 - 1. 2024 - \$628,000.00, which includes \$590,000.00 in construction funds and \$38,000.00 for combining design plans
 - 2. 2025 - \$300,000.00
 - 3. 2026 - \$662,000.00
- B. If Boulder County fails to make timely payment to CDOT as required by this section, Boulder County shall pay interest to CDOT at a rate of one (1) 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.

Section 7. State and Local Agency Commitments

- A. Design
 - 1. Boulder County is responsible for providing its final design plans for the Bikeway to be combined into CDOT's overall Project design plans. This includes any design worksheets, special provisions, or estimates provided to CDOT for incorporation into the Project.
 - 2. Boulder County is responsible for:
 - a. the cost of incorporating its design plans for the Bikeway into the Plans, as stated in **§5.C**.
 - b. preparing its final design 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 and in compliance with all federal and State statutes, codes, and regulations.
 - c. preparing special provisions and estimates in accord with Boulder County Multimodal Transportation Standards and the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction.
 - d. preparing required construction phasing and detour plans, in order to prevent interference of the construction work and to protect the traveling public. CDOT's CMGC contractor will prepare detailed Method of Handling Traffic (MHT) plans for the Project.
 - e. ensuring that its Bikeway plans are stamped by a Colorado Registered Professional Engineer.

- f. ensuring that its plans are accurate and complete.
 - g. Boulder County will submit its final design plans for the Bikeway for incorporation into the Plans made by CDOT's consultant for this Project. Such plans shall be submitted to CDOT by Boulder County in a timely fashion as directed by CDOT to allow for CDOT to negotiate the Opinion of Probable Construction Costs ("OPCC") with CDOT's Construction Manager Preconstruction service provider.
 - h. if the Bikeway Actual Cost exceeds the Budgeted Construction Amount, Boulder County will be responsible for 100% of the additional amount unless funding is reallocated from other portions of the Project to the Bikeway by CDOT. Any agreed upon additional amount shall be due within 60 days after receipt of billing by CDOT. If the Actual Cost exceeds the Budgeted Construction Amount, and the Parties do not agree to a new Contribution, then this Agreement shall be amended to revise and decrease the SOW. Any changes to the SOW must still meet all funding requirements.
 - i. having a representative on-site or available by phone to make decisions that must be made immediately in the field during pre-construction and construction.
3. CDOT is responsible for:
- a. using the Bikeway plans provided by Boulder County and incorporating those into the Plans for the Project. Boulder County will be given the opportunity to review the final Bikeway design of the Plans and provide feedback.
 - b. providing final assembly of Plans and contract documents.
 - c. ensuring the Plans are stamped by a Colorado Registered Professional Engineer.
 - d. CDOT may adjust the Bikeway portion of the Plans as reasonably necessary to address unanticipated or unknown issues that arise during the construction process. CDOT will communicate required changes to Boulder County and give Boulder County an opportunity to provide input on the changes that impact the Bikeway plans. Possible solutions may be to change the Plans or increase funding by Boulder County.
 - i. During construction, CDOT may agree to non-material changes, as determined by CDOT, that do not create an increase in the Budgeted Construction Amount in the field by completing a field speed memo (CDOT Form 105) and submitting it to the CMGC service provider.
 - ii. During construction, CDOT shall notify Boulder County of any Material Changes that do not increase Actual Costs, as determined by CDOT. The Parties will work to identify a resolution for the Material Change and the resolution documented in Contract Modification Order (CMO). Boulder County's concurrence to these changes will be evidenced by written notice pursuant to §16. In the event Boulder County's written concurrence cannot be obtained within two (2) Working Days, CDOT shall independently authorize the change.
 - iii. If a Material Change that does increase the Actual Cost occurs during construction, CDOT will complete a CMO. Boulder County's concurrence to these changes will be evidenced by written notice pursuant to §16. In the event concurrence cannot be obtained within three (3) Working Days CDOT shall independently authorize the change.
 - iv. CDOT is the owner of the Project and will be responsible for the CMGC contract. CDOT shall have final decision authority over the entire Project's right of way, design and construction, which includes all elements related to esthetics as long as this decision is consistent with the agreed upon Project goals as stated in the CMGC Request for Proposal.

B. Construction

1. This work includes construction. CDOT shall perform the construction in accordance with the approved design Plans and administer the construction all in accord with the Bikeway Scope of Work (**Exhibit A**). The 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 CMOs and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement.
3. Subject to §6, CDOT is the responsible party:
 - 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 Agreement, the requirements of the construction contract and applicable State procedures.
- b. it shall negotiate a Construction Agreed Price (“CAP” or “CAPs”) for the construction of the Project. Terms of the Project construction will be documented in CDOT’s general contractor highway construction contract. Boulder County shall be given the State’s confidential ICE. Within 48 hours of having such information, Boulder County may provide additional information for CDOT’s consideration during the process. Parties also will have the opportunity to reduce or alter the SOW for any line items in order to resolve discrepancies in the prospective negotiated rates for materials, which also shall be determined within 48 hours of the disclosure of the ICE.
 - c. If such negotiations are unsuccessful, bids are to be let for the construction of the Project, CDOT shall, in conjunction with Boulder County, advertise the call for bids and, upon concurrence by Boulder County, will award the construction contract(s) to the low responsive, responsible bidder.
 - (1) in advertising and awarding the bid for the construction of a federal-aid project, CDOT 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 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) if the Project is let for competitive bid, Boulder County 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. Boulder County must declare its concurrence or non-concurrence within three (3) Working Days after said bids are publicly opened.
 - (3) by indicating its concurrence in such award, Boulder County, 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.
 - d. 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 8. ROW Acquisition and Relocation

The Bikeway includes right of way. CDOT owns the majority of the necessary rights of way for the Bikeway. CDOT shall obtain any additional right of way from third parties. The Budgeted Construction Amount includes the value of the right of way acquisition.

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

Allocation of Responsibilities are as follows:

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

Regardless of the option selected above, CDOT retains oversight responsibilities. Boulder County’s and CDOT’s responsibilities for each option is specifically set forth in CDOT’s Right of Way Manual. The manual is located at <http://www.coloradodot.info/business/manuals/right-of-way>.

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

Section 9. Utilities

A. Coordination Responsibility

Proper clearance or approval from all affected utility providers and ditch users or owner(s) as listed in **Exhibit B** is required for the Project as directed by the CDOT Regional Utility Engineer. Boulder County is responsible for obtaining clearances or approvals for all utilities affected as a direct result of the Bikeway scope exclusively, otherwise CDOT is responsible for obtaining the clearances or approvals. CDOT is responsible for obtaining clearances or approvals for all irrigation users on the Project and for utilities affected by scope other than that of the Bikeway scope. Prior to granting a Notice to Proceed for construction of this Project, CDOT will certify in writing that all such clearances have been obtained.

B. Financial Responsibility

The costs of all utility and irrigation relocations that are required as a direct result of the Bikeway will be included in the Actual Cost for the Bikeway. If the utility and irrigation relocation are the result of multiple facets of the Project, then these costs will be split proportionally among the affected aspects of the Project. Utility and Irrigation relocations and related costs performed as part of the Project construction shall be determined and included in the calculation of Actual Costs for the Bikeway as defined in this Agreement. Cost-incurring utility relocations performed by utility providers and paid for through the utility phase of the Project may include but are not limited to the known relocations listed in **Exhibit B**. Boulder County is responsible for any additional relocations or costs that are a direct result of all Bikeway relocations and will be included in the Actual Cost for the Bikeway.

If additional and unexpected utility and irrigation relocations are necessary because of multiple Project elements, the Parties will determine an appropriate split and the appropriate share will be included in the Actual Cost of the Bikeway. Boulder County will be responsible for its share of the relocation(s) as determined by the Parties.

Section 10. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Project work is to be accomplished by railroad company forces. CDOT 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. CDOT 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. Prescribing 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 11. Environmental Obligations

The Bikeway in CDOT ROW or its resulting impact will not be considered a use as defined in Section 4(f) of the Department of Transportation Act of 1966 and its implementing regulations, Part 774 of Title 23 of the Code of Federal Regulations (Section 4(f)), or use of property defined in Section 6(f) of the Land and Water Conservation Fund Act (Section 6(f)). If a future CDOT project impacts the Bikeway in CDOT ROW, such impacts shall not trigger the analysis and mitigation requirements of Section 4(f) and Section 6(f).

CDOT shall perform the Project 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.

The environmental responsibilities listed below are the mutual understanding of the Parties at the time of execution of this Agreement.

During the Pre-Construction phase:

- CDOT is responsible for the following during the Pre-Construction phase:
 - Noise,
 - Hazardous Material - Initial Site Assessment / Modified Environmental Site Assessment (HazMat – ISA/MESA) survey,
 - Threatened and Endangered (T&E) and State Listed Species survey and Section 7 of the Endangered Species Act,
 - Wetland Delineation (Survey),
 - Paleontology,
 - Archeology,
 - History (Eligibility & Effects Determination Letter – only),
 - Section 4(f) of the Department of Transportation Act of 1966 – Historic,
 - Section 4(f) of the Department of Transportation Act of 1966– Non-Historic,
 - Section 6(f) of the Land and Water Conservation Fund Act,
 - Raptors/Migratory Birds,
 - Environmental Justice,
 - Prepare the SB 40 Certification application for the Bikeway,
 - Floodplain Development Permit(s),
 - Lighting Plan, and
 - Stormwater Construction Permit.
- Boulder County is responsible for the following during Pre-Construction phase:
 - T&E and State Listed Species (Preconstruction surveys for burrowing owls based on Colorado Parks and Wildlife (CPW) protocol,
 - Prepare Black-Tailed Prairie Dog (BTPD) Management Plan,
 - History (excluding Eligibility & Effects Determination Letter),
 - Section 4(f) of the Department of Transportation Act of 1966 – Non-Historic Documentation,
 - Visual for the Bikeway design plans, subject to FHWA and CDOT visual impact guidelines (Boulder County plans were incorporated into Project plans),
 - Mitigate any impact to existing Permanent Water Quality facilities,
 - Floodplain Development Permit(s),
 - Bikeway Underpass Plans,
 - Provide information to CDOT for the Bikeway SB40 Application
 - Provide information to CDOT for the Bikeway Underpass Dewatering Permit, and
 - Provide information to CDOT related to the Stormwater Construction Permit.

The Parties understand all of the pre-construction phase must be completed before CDOT can move on to the construction phase.

During the construction phase, in the event of additional or unexpected environmental mitigation is necessary, Boulder County will be responsible for redesign to resolve unforeseen issues.

The responsibilities for mitigation during construction are as follows:

- Boulder County is responsible for 100% of the following expenses, which are included in the Bikeway Actual Costs:
 - Boulder County will serve as the liaison and the project point of contact in coordinating and submitting the required 1041 documents to the Boulder County Planning Department.
 - All costs and conditions of a construction dewatering permit as a result of the Bikeway construction.
 - All costs and conditions of a construction remediation permit as a result of the Bikeway construction.
 - If the Bikeway portion of the Project needs a subterranean permit, Boulder County will be

- responsible for the subterranean permit, including any long-term reporting requirements.
- Mitigation costs to replace wetlands at a 1:1 ratio due to the Bikeway construction.
- Boulder County is responsible for 46.5% of the following mitigation expenses, which are included in the Actual Costs:
 - BTPD Mitigation Plan,
 - Tree Replacement/Mitigation,
 - Staging and stockpiling,
 - Revegetation,
 - Noxious weed management,
 - MS4 and Stormwater Construction Permit inspections, and
 - Migratory Bird Treaty Act management.
- If there are additional and unexpected mitigation costs, these costs will be split proportionally among the affected aspects of the Project.

Section 12. Maintenance Obligations

The Parties have discussed general operations and maintenance responsibilities. During Project design and construction, the Parties will finalize the assignment of maintenance responsibilities in an operations and maintenance intergovernmental agreement and Special Use Permit with License Agreement.

Section 13. Record Keeping

CDOT shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this Agreement. CDOT shall maintain such records for a period of five (5) years after the date of termination of this Agreement or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. CDOT shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of Boulder County, FHWA and United States Treasury Department to inspect the Project and to inspect, review and audit the Project records.

Section 14. Termination Provisions

This Agreement may be terminated as follows:

- A. Termination for Convenience. CDOT may terminate this Agreement at any time CDOT determines that the purposes of the distribution of monies under the Agreement would no longer be served by completion of the Bikeway. CDOT shall effect such termination by giving written notice of termination to Boulder County 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, Boulder County shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if Boulder County shall violate any of the covenants, agreements, or stipulations of this Agreement, CDOT shall thereupon have the right to terminate this Agreement for cause by giving written notice to Boulder County 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 Boulder County under this Agreement shall, at the option of CDOT, become its property, and Boulder County shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted.
- C. Early Termination in the Public Interest. CDOT is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise becomes unavailable to fund this ARPA Award, CDOT, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by CDOT for breach by Boulder County. Notwithstanding the above, Boulder County shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of the Agreement by Boulder County, and CDOT may withhold payment to

Boulder County for the purposes of mitigating its damages until such time as the exact amount of damages due to CDOT from Boulder County is determined.

If, after such termination, it is determined, for any reason, that Boulder County was not in default or that Boulder County'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 Agreement had been terminated for convenience, as described herein.

Section 15. Legal Authority

Boulder County warrants that it possesses the legal authority to enter into this Agreement 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 Agreement and to bind Boulder County to its terms. The person(s) executing this Agreement on behalf of Boulder County warrants that such person(s) has full authorization to execute this Agreement.

Section 16. Representatives and Notice

CDOT will liaison with Boulder County through CDOT's Region Director, Region 4, 10601 West 10th Street, Greeley, CO 80634. The said Region Director will also be responsible for coordinating the State's activities under this Agreement and will also issue a "Notice to Proceed" for commencement of the Project work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of CDOT's Transportation Region 4 and Boulder County. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either Party may from time to time designate in writing a new or substitute representative(s).

If to CDOT:

Adnana Murtic
CDOT Region 4
1050 Lee Hill Drive
Boulder, Colorado 80302
303-546-5657
adnana.murtic@state.co.us

If to Boulder County:

Stacey Proctor
Boulder County
2525 13th Street, Suite 203
Boulder, Colorado, 80304
303-441-1107
sproctor@bouldercounty.org

Section 17. Successors

Except as herein otherwise provided, this Agreement 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 Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the State and Boulder County. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of CDOT and Boulder County that any such person or entity, other than CDOT or Boulder County receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

Section 19. Governmental Immunity

Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement 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 Parties, 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 Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of this Agreement 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 Agreement 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 Agreement 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 Agreement Terms

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the Agreement 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 Boulder County.

Section 24. Modification and Amendment

This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both Parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

Section 25. Disputes

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement, which is not disposed of by agreement, will be decided as follows:

- Project Manager for CDOT and Boulder County's Representative identified in §16. If these individuals cannot resolve the dispute within two (2) business days, it will elevate to the next level of dispute resolution.
- Resident Engineer / Project Director for CDOT and Deputy Director of Transportation Planning for Boulder County. If these individuals cannot resolve the dispute within two (2) business days, the matter will elevate to the next level of dispute resolution.
- PEIII for CDOT and Deputy Director of Transportation Planning for Boulder County within two (2) business days, it will elevate to the next level of dispute resolution.
- Regional Transportation Director for CDOT and Department Head, Community Planning and Permitting for Boulder County.
- Deputy Chief Engineer for CDOT and County Administrator for Boulder County within two (2) business days, it will elevate to the next level of dispute resolution.

If these individuals cannot resolve the dispute within the respective time limits, the matter will be managed by CDOT's Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 10 calendar days after the date of receipt of a copy of such written decision, Boulder County 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, Boulder County shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Boulder County shall proceed diligently with the performance of the agreement 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 Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 26. Colorado Special Provisions (Colorado Fiscal Rule 3-3)

These Special Provisions apply to all contracts. Contractor refers to Boulder County and Contract refers to Agreement.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(19), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S., applicable Local Agency law, rule or regulation.

Financial obligations of the Parties payable after the current State Fiscal Year or fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the Parties to indemnify or hold Contractor harmless; requires the Parties to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State or Local Agency 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.

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EXHIBIT A SCOPE OF WORK

Background

CDOT is the Project owner responsible for implementing the CO 119 Safety, Mobility and Bikeway Project (SMBP). The Project includes critical intersection improvements of the CO 119 Diagonal Highway between Foothills Parkway in the City of Boulder and Hover Street in the City of Longmont and a commuter bikeway as specifically described in the Plans. CDOT will use a Construction Manager General Contractor (“CMGC”) project delivery method.

Subject to any differences in the Plans, which supersede the terms of this SOW, the CO 119 Bikeway design generally consists of the following scope elements:

- Segment between Foothills Parkway and Jay Road, with a bridge over Fourmile Canyon Creek and an underpass under CO 119 (south of Jay Road) and a bikeway underpass under Jay Road,
- Segment between Jay Road and 63rd Street, with an underpass or overpass to cross 63rd Street,
- Segment between 63rd Street and CO 52,
- CO 52 bikeway underpass,
- Segment between CO 52 and Niwot Road,
- Niwot Road bikeway underpass,
- Segment between Niwot Road and Airport Road,
- Airport Road – Bikeway at-grade crossing, and
- Segment between Airport Road and Hover Street, with a bridge over Left Hand Creek and an underpass under southbound CO 119 north of Airport Road.

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EXHIBIT B

UTILITY IMPACTS OF THE BIKEWAY AND RESPONSIBILITIES

Table 1 - Cost-incurring Bikeway Utility Relocations at 60% Design

GENERAL LOCATION	UTILITY OWNER	CONDUIT TYPE
Fourmile Underpass	City of Boulder & Zayo	2x2" (COB) & 2x1.25" (Zayo) Duct Bundle
Fourmile Underpass	City of Boulder	1x3" PVC Conduit
Jay Underpass	City of Boulder	Single Conduit
Jay Underpass	City of Boulder & Zayo	2x2" (COB) & 2x1.25" (Zayo) Duct Bundle
Jay Underpass	Boulder Valley School District	Single Conduit
63rd Underpass	Lumen City of Boulder	Unknown
Fourmile Underpass	City of Boulder	24" DIP*
63rd Underpass	City of Boulder	24" PCCP*

* - Denotes utilities that, if required to be relocated, represent significant costs that may cause the Bikeway to exceed the Estimated Cost. If these utility relocation costs, in addition to the sum total of all other Boulder County-responsible relocation costs, known and unknown, cause the Actual Costs to exceed the Estimated Costs, the Parties will follow the terms as defined in Section 5.B of this Agreement.