

**Permanent Water Quality Facilities Maintenance**  
**City/Town of \_\_\_\_\_**  
**Region 4**

**SAP #:** \_\_\_\_\_  
**Routing #:** \_\_\_\_\_

## **INTERGOVERNMENTAL AGREEMENT**

THIS INTERGOVERNMENTAL AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_ 20\_\_\_\_, and hereinafter referred to as the "Agreement", by and between the State of Colorado for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION ("State" or "CDOT"), and the \_\_\_\_\_, COLORADO, CDOT vendor# \_\_\_\_\_ ("Local Agency"), each of which may also be referred to herein individually, as a "Party" and collectively as the "Parties."

This Agreement shall not be effective or enforceable until it is approved and signed by the Governor of the State of Colorado or the Governor's designee and an authorized signatory of the Local Agency ("Effective Date").

### **RECITALS**

1. Permanent water quality (PWQ) facilities have been constructed to treat CDOT MS4 area per the CDOT Multiple Separate Storm Sewer System ("MS4") program
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. CDOT and Local Agency desire to enter into this Agreement to delineate their responsibilities for operating and maintaining the PWQ facilities treating CDOT MS4 area within the \_\_\_\_\_. CDOT understands and agrees that the Local Agency is willing to assume maintenance obligations for all PWQ facilities under this Agreement.
4. CDOT confirms that it has the authority to enter into this Agreement and that no state or federal laws or regulations have been violated by entering into this Agreement. CDOT's authority to enter into this Agreement exists pursuant to CRS § 43-2-101(4) (c) and CRS § 43-2-104.5. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies. These recitals are hereby incorporated into the terms of this Agreement.
5. The Local Agency has the resources to perform the desired maintenance on the PWQ facilities that it is responsible for maintaining per this Agreement;
6. "MS4": A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
  - a. owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act ("CWA") that discharges to waters of the United States;
  - b. designed or used for collecting or conveying stormwater;

- c. which is not a combined sewer; and
  - d. which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).
7. "Drainage Facilities" refers to the permanent facilities and improvements intended to capture, detain, convey, reduce and/or manage stormwater runoff. Examples include, but are not limited to, stormwater drain inlets and pipes, flood-control-only facilities, water control facilities designed for non-MS4 purposes (whether to meet TMDL/TMAL requirements or that do not meet MS4 design criteria), PWQ Stormwater Conveyance Facilities, and PWQ Facilities. Also referred to as Stormwater Facilities, Storm Drainage Systems or Facilities, or Storm Sewers.
  8. "Operation & Maintenance Manual" (O&M) refers to any owner's manual and/or guide incorporated into Exhibit A hereto that addresses how the PWQ Facilities should operate and how to maintain them.
  9. "PWQ Stormwater Conveyance Facilities" refers to the collection and conveyance systems, including inlets, catch basins, pipelines, and open channels that are used to transport stormwater to or from PWQ facilities. Any conveyance beyond the PWQ Stormwater Facility outfall (i.e. beyond the outlet structure) is in the PWQ Stormwater Conveyance Facilities.
  10. "PWQ Stormwater Access Facilities" consist of the surface improvements such as fencing, security gates, and access roads which are needed to operate and maintain the PWQ facilities.
  11. "PWQ Facilities" are stormwater facilities that are intended to provide water quality benefits and are specifically used to meet water quality requirements as outlined in the Colorado Discharge Permit System (COPS).
  12. The "PWQ Facilities," "PWQ Stormwater Conveyance Facilities," and "PWQ Stormwater Access Facilities" are collectively referred to as "Facilities." This does not include "Drainage Facilities.
  13. "Stormwater" shall mean stormwater runoff, snow melt runoff, and surface runoff and drainage. See 5 CCR 1002-61.2(103).
  14. "Stormwater Facilities" collectively refers to "drainage facilities" and "permanent water quality facilities".

It is the intent of this Agreement that all Facilities listed in Exhibit A will be maintained by the Local Agency. Additional facilities to be added at a later date by Amendment

THE PARTIES NOW AGREE THAT:

### **Section 1. Scope of Work**

The Local Agency will maintain the Facilities as depicted in Exhibit A. Such maintenance by the Local Agency shall be conducted in accordance with all applicable statutes, CDOT MS4 requirements, applicable legal requirements, ordinances and regulations, and the O&M, which define the requirements to maintain the Facilities during their useful life. Maintenance shall include routine landscaping,

sediment removal, oil and other chemical removal, trash removal and minor structural repairs of the Facilities as necessary to meet the requirements of this Agreement. The Local Agency will make proper provisions for such maintenance obligations each year.

## **Section 2. CDOT Commitments**

CDOT will be responsible for the following:

- A. In the event that safety concerns are identified relating to the Facilities, CDOT will partner with the Local Agency and any other affected local jurisdictions to identify the appropriate response to maintain safe and functional Facilities. In implementing that appropriate response, improvements that are not the normal and routine operations and maintenance responsibility of the Local Agency, including reconstruction of the facilities, shall be the responsibility of the Parties pursuant to CDOT Updated Procedural Directive 501.1, Requirements for Storm Drainage Facilities and Municipal Separate Storm Sewer System Facilities (MS4), effective April 22, 2016.

In the event the Facilities fail due to surpassing their life cycle as outlined in the O&M, the Parties will be responsible for improvements that are not covered by routine operations and maintenance responsibilities of the Local Agency, including reconstruction of the Facilities, per CDOT Updated Procedural Directive 501.1, Requirements for Storm Drainage Facilities and Municipal Separate Storm Sewer System Facilities (MS4), effective April 22, 2016. Only after funding for the improvement has been identified and obtained may the Parties perform major reconstruction or capital improvement of the Facilities, if necessary, per CDOT Updated Policy Directive 501.1, Requirements for Storm Drainage Facilities and Municipal Separate Storm Sewer System Facilities (MS4), effective April 22, 2016.

- B. CDOT (and FHWA, if applicable) will make periodic inspection of the Facilities to verify that they are being adequately maintained and will report required and recommended maintenance items to the Local Agency. CDOT may issue a written notice to cure deficiencies in the event the Local Agency fails to inspect, report, or properly maintain the Facilities identified in Exhibit A. In the event the deficiencies so noticed to the Local Agency are not remedied within three (3) months after said written notice from CDOT to the Local Agency, CDOT may take whatever steps CDOT deems necessary to maintain the Facilities. The Local Agency shall reimburse CDOT its actual and documented costs for such maintenance and repair work including labor, equipment, supplies and materials. If CDOT repairs any deficiencies, it is under no obligation to maintain or repair in the future.
- C. CDOT will require inspection and maintenance documentation from the Local Agency every year of the useful life and operation of the Facilities identified in Exhibit A attached hereto. The State (and FHWA, if applicable) will make periodic inspections of the Facilities to verify that they are being adequately maintained.
- D. CDOT agrees it will not remove or alter the Facilities in such a way that reduces the documented treatment area as originally constructed. Should CDOT modify the Facilities to add additional treatment area, the changed treatment area shall be documented via a drainage report. CDOT may perform major reconstruction or capital improvement of the Facilities, if necessary, only after funding for the improvement has been identified and obtained per CDOT Updated Policy Directive 501.1, Requirements for Storm Drainage Facilities and Municipal

Separate Storm Sewer System Facilities (MS4), effective April 22, 2016. Prior to commencing any reconstruction activities, CDOT shall coordinate with the Local Agency to minimize impacts to landscaping enhancements that were installed by the Local Agency. CDOT will not be responsible for replacing any enhanced landscaping or irrigation installed by the Local Agency. Any fines levied against CDOT or the Local Agency shall be the responsibility of the Party whose action or inaction is the cause of the fine, regardless of which Party the fine is levied against.

### **Section 3. Local Agency Commitments**

The Local Agency will be responsible for the following

- A. The Local Agency will maintain and operate the Facilities and associated improvements identified in Exhibit A attached hereto to ensure that the Facilities are and remain in proper working conditions in accordance with all applicable statutes, the Local Agency's and CDOT's MS4 requirements, applicable legal requirements, ordinances and regulations, and the O&M (if any), which define the Local Agency's obligations to maintain such improvements during their useful life. The identified Facilities shall be maintained by the Local Agency at its own expense, unless otherwise agreed to by all Parties in writing. CDOT agrees to grant the Local Agency entrance upon CDOT's right of way ("ROW") for the purpose of performing the maintenance activities provided the Local Agency first obtain a special use permit from CDOT. Maintenance shall include routine landscaping, sediment removal, oil and other chemical removal, trash removal and minor structural repairs of the Facilities as necessary to meet the requirements of this Agreement.
- B. The maintenance of the Facilities shall be performed in accordance with all applicable O&M (if any) for each specified Facilities.
- C. The Local Agency shall inspect the Facilities identified in Exhibit A attached hereto at the Local Agency's expense per the recommended frequency in the O&M (if applicable) for the Facilities, but in any case not less than annually. The inspections shall be performed by a person experienced in the inspection of stormwater facilities. Inspections must ensure proper Facilities function and compliance with the most stringent MS4 permit requirements. Inspection reports shall be submitted in writing by the Local Agency to the CDOT PWQ Manager by December 31st of each year for the Facilities that receive flows from CDOT ROW. Any inspection form may be used if it is acceptable by agreement of the Parties and meets CDOT's MS4 permit requirements. The Local Agency agrees to report maintenance activities to CDOT along with the inspection reports. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.
- D. In the event the Local Agency fails to inspect, report, or properly maintain the Facilities identified in Exhibit A, CDOT may issue a written notice to cure such deficiencies. In the event the deficiencies are not remedied within three (3) months after written notice of such deficiencies from CDOT to the Local Agency, CDOT may take whatever steps CDOT deems necessary to maintain the Facilities. The Local Agency shall reimburse CDOT its actual and documented costs for such maintenance and/or repair work including labor, equipment, supplies and materials. If CDOT remediates any deficiencies, it is under no obligation to maintain or repair in the future. The Local Agency, its successors and assigns shall hold harmless CDOT, its agents and employees from any and all damages, accidents, casualties,

occurrences or claims which might be asserted against CDOT arising out of or resulting from the construction, presence, existence, maintenance or use of the Facilities by the Local Agency

- E. The Local Agency shall, during the term of this Agreement, be permitted to enter upon CDOT's right of way ("ROW") for the purpose of performing the maintenance activities provided the Local Agency first obtains a special use permit from CDOT. The Local Agency shall comply with and perform all requirements and provisions of the special use permit, including but not limited to those relating to access, safety, and traffic control, and shall restrict access to the ROW to only those persons and equipment necessary to perform the work described in this Agreement. The Local Agency and its agents, employees and contractors shall not use the mainline roadway of any State highway or any portion of the shoulder thereof as means of ingress or egress to and from the Facilities with respect to any task to be performed by the Local Agency pursuant to the terms of this Agreement.
- F. The Local Agency agrees it will not remove or alter the Facilities in any way that reduces the documented treatment area as originally constructed. Should the Local Agency modify the Facilities to add additional treatment areas, the changed treatment area shall be documented via a drainage report provided by the Local Agency to CDOT within the calendar year any such modification is completed by the Local Agency. Notwithstanding anything in this Agreement to the contrary, the Local Agency, in its sole discretion, may expand or increase the capacity of the Facilities and landscape the area as determined by the Local Agency.
- G. Any fines levied against CDOT as a result of the Local Agency's failure to comply with the terms of this Agreement shall be the sole and absolute responsibility of the Local Agency or its successors.

#### **Section 4. Term and Termination Provisions**

- A. This Agreement shall not be effective until executed by both Parties (Effective Date). The term of this Agreement shall commence on the Effective Date and shall expire on (date 10 years from execution). The maintenance obligations of the Local Agency under this Agreement shall commence on the date of the final written acceptance of the Facilities by CDOT and will remain in effect for ten (10) years from the Effective Date or until this Agreement is terminated by mutual, written agreement of the Parties hereto or in accordance with the provisions of Section 4. B. This Agreement may be renewed by the Parties for successive ten (10) year terms by an amendment agreed to in writing by both Parties to this Agreement that is properly executed and approved in accordance with applicable law.
- B. Termination for Cause. If, through any cause, either Party shall fail to fulfill its obligations under this Agreement, or if either Party shall violate any of the covenants, conditions, agreements, or stipulations of this Agreement, the non- defaulting Party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the other Party of its intent to terminate and providing at least thirty (30) days from the date of the notice within which to cure the default, unless the other Party can within said thirty (30) days reasonably show cause why termination is not appropriate.

#### **Section 5. Legal Authority**

The Parties hereto hereby warrant that each possesses the legal authority to enter into this Agreement

and that each has taken all actions required by its respective procedures, rules, regulations, and/or applicable law to exercise that authority, and each has lawfully authorized its undersigned signatories to execute this Agreement and to bind each to its terms. The person(s) executing this Agreement on behalf of each Party warrants that such person(s) has full authority to execute this Agreement. Local Agency may evidence such authority by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement. A copy of any such ordinance/resolution or authority letter is attached hereto as Exhibit B.

## **Section 6. Representatives and Notice**

The State will provide a Facilities liaison with the Local Agency through the State's Region Director, Region 4, 10601 W. 10th Street, Greeley, Colorado 80624. Said Region Director will also be responsible for coordinating the State's activities under this Agreement. All communications relating to the day-to-day activities for the inspection, maintenance and reporting work shall be exchanged between representatives of the State's Transportation Region 4 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below, or as either Party may from time to time designate in writing to the other Party as new or substitute representatives.

If to State:  
Nick Schipanski  
Region 4 Water Quality Specialist  
10601 10th Street  
Greeley, CO 80634  
970-350-2127  
[nicholaus.schipanski@state.co.us](mailto:nicholaus.schipanski@state.co.us)

with a copy to:  
Rachel Hansgen  
CDOT HQ PWQ Manager  
2829 West Howard Place  
Denver, Colorado 80204  
303-757-9975  
[rachel.hansgen@state.co.us](mailto:rachel.hansgen@state.co.us)

If to the Local Agency:

## **Section 7. 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.

## **Section 8. 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., CRS, as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, the Local Agency and their respective departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §24-10-101, et seq., CRS, as now or hereafter amended, and the risk management statutes, §24-30-1501, et seq., CRS, as now or hereafter amended.

## **Section 9. 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 10. 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 11. Modification and Amendment**

- A. 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.
- B. Either Party may suggest renegotiation of the terms of this Agreement, provided that the Agreement shall not be subject to renegotiation more often than annually, and that neither Party shall be required to renegotiate. If the Parties agree to change the provisions of this Agreement, the renegotiated terms shall not be effective until this Agreement is amended/modified accordingly in writing.

## **Section 12. 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 of the Parties 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 such written decision, the Local Agency gives notice to the State of its written appeal addressed to the Executive Director of the Department of Transportation. A copy of the Local Agency's written appeal shall be enclosed with said notice. 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 Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his or her duly authorized representative for the determination of such appeals shall 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 hereunder. 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 13. Does not supersede other agreements**

This Agreement is not intended to supersede or affect in any way any other agreement (if any) that is currently in effect between the State and the Local Agency for other maintenance and operations services on State Highway rights-of-way.

### **Section 14. Sub-Local Agencies**

The Local Agency may subcontract any part of its performance required under this Agreement, subject to reasonable advance written notice to and consent thereto by the State. The State understands that the Local Agency may intend to perform some or all of its obligations under this Agreement through a subcontract. The Local Agency shall not assign any of its obligations of performance under this Agreement without the express written consent of the State, which shall not be unreasonably withheld. Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective lawful successors.

### **Section 15. Colorado Special Provisions**

- A. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3) These Special Provisions apply to all contracts except where noted in italics.
- B. STATUTORY APPROVAL. §24-30-202(1), C.R.S. This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.
- C. FUND AVAILABILITY. §24-30-202(5.5), C.R.S. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- D. GOVERNMENTAL IMMUNITY. Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions, committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed



or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

- E. **INDEPENDENT CONTRACTOR** Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither Local Agency nor any agent or employee of Local Agency shall be deemed to be an agent or employee of the State. Local Agency shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Local Agency 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 Local Agency or any of its agents or employees. Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Local Agency 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.
- F. **COMPLIANCE WITH LAW.** Local Agency 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.
- G. **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.
- H. **PROHIBITED TERMS.** Any term included in this Contract that requires the State to indemnify or hold Local Agency harmless; requires the State to agree to binding arbitration; limits Local Agency'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.
- I. **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. Local Agency hereby certifies and warrants that, during the term of this Contract and any extensions, Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Local Agency 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.
- J. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** §§24-18-201 and 24-50-507, C.R.S. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Local Agency's services and Local Agency shall not employ any person having such known interests.

- K. **VENDOR OFFSET AND ERRONEOUS PAYMENTS.** §§24-30-202(1) and 24-30-202.4, C.R.S. [Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, et seq., C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State.
- L. **PUBLIC CONTRACTS FOR SERVICES.** §§8-17.5-101, et seq., C.R.S. [Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Local Agency 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 Local Agency that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Local Agency (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Local Agency has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Local Agency participates in the Department program, Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Local Agency fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Local Agency shall be liable for damages.
- M. **PUBLIC CONTRACTS WITH NATURAL PERSONS.** §§24-76.5-101, et seq., C.R.S. Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Local Agency (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101,

et seq., C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

## **EXHIBIT A – Covered PWQ Facilities**

## **EXHIBIT B – Local Agency Authority**