

RESOLUTION NO. R - 020 - 001

THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS, COLORADO

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COLORADO DEPARTMENT OF TRANSPORTATION AND THE  
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS,  
STATE OF COLORADO, REGARDING COST SHARING FOR THE  
WIDENING OF US 85 FROM LOUVIERS TO MILEPOST 191.75,  
CDOT PROJECT NUMBER CC 0852-106 (18890)

**WHEREAS**, the Board of County Commissioners of the County of Douglas (the "County") and the Colorado Department of Transportation (CDOT), desire to enter into an intergovernmental agreement concerning funding for constructing improvements on US 85, including widening from Louviers to milepost 191.75; and

**WHEREAS**, the County is willing to enter into such an agreement with CDOT in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto; and

**WHEREAS**, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S.; now, therefore,

**BE IT RESOLVED**, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the intergovernmental agreement between the Board of County Commissioners of the County of Douglas and the Colorado Department of Transportation, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County.

**PASSED AND ADOPTED** this 14 day of January, 2020, in Castle Rock, Douglas County, Colorado.

THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS, COLORADO

BY: Roger A. Partridge

ROGER A. PARTRIDGE, Chair

ATTEST:

Emily Wren



Emily Wren, Clerk to the Board

(Local \$CDOTWRK)  
PROJECT: CC 0852-106 (18890)

REGION 1 mg/dz/vm

## CONTRACT

**THIS CONTRACT**, executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the State of Colorado, for the use and benefit of the Colorado Department of Transportation ("State" or "CDOT") and the Board of County Commissioners of Douglas County, Colorado, 100 Third Street, Castle Rock Colorado 80104, CDOT Vendor #: 0002000062 ("County" or "Local Agency"), and the State and the Local Agency shall each be referred to as a "Party" and together shall be referred to as the "Parties."

## **RECITALS**

1. The Local Agency has made funds available for project CC 0852-106 (18890), which shall consist of widening US 85 from Louviers to Milepost 191.75 to four lanes with 10- foot shoulders, and reconstructing with new concrete pavement hereinafter referred to as the "Project" and defined in more detail in **Section 1**, (the "Scope of Work").
2. CDOT shall obtain required approval, clearance and CDOT is responsible for ensuring coordination has been accomplished from and with appropriate agencies.
3. This contract is executed under the authority of CRS § 29-1-203, 43-1-110, 43-1-116, 43-2-101(4)(c), 43-2-144 and **Exhibit B**.
4. The Local Agency desires to provided funding for the improvements, as described in **Section 4**.
5. The Local Agency anticipates State will design and construct the improvements for the Project. The Local Agency understands that before the Work or construction begins, it may be revised as a result of design changes made by the State during the design or construction phases. The State will coordinate with the Local Agency in its internal review process whenever the proposed changes require Local Agency approval.
6. The Parties hereto desire to agree upon the division of responsibilities with regard to the Project.

## **THE PARTIES NOW AGREE THAT:**

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

The work under this Contract shall consist of completing construction of a project that involves widening and reconstructing a portion of US 85 from Louviers to Milepost 191.75, for which the Local Agency shall provide funding as set forth in **Section 4** and the State shall be responsible for all phases of project development required to construct the Project that is located within Douglas County, Colorado, as more specifically described in **Exhibit A** (the "Work").

### **Section 2. Order of Precedence**

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

1. This Contract
2. **Exhibit A** (Scope of Work)
3. Other Exhibits in descending order of their attachment.

### **Section 3. Term**

This contract shall be effective upon approval of the CDOT Chief Engineer or designee. The term of this agreement shall continue through the completion and final acceptance of the Project by the State, Federal Highway Administration ("FHWA"), or five (5) years from the effective date, whichever occurs first.

### **Section 4. Project Funding Provisions**

- A. The Work is estimated to be approximately \$37,000,000. For the purpose of this contract, CDOT is responsible for completing the Work and paying for all project construction costs except for the Local Agency's contribution. The Local Agency is prepared to provide its portion of the funding for the Work, as provided in **Section 4** and as evidenced by the resolution attached hereto and incorporated herein as **Exhibit B** and by the signing of this Contract, which expressly authorizes the Local Agency the authority to expend its contribution toward the Project.
- B. For the purpose of this Contract, the County is responsible for a contribution of \$2,500,000 provided CDOT notifies the County in writing that it has awarded a construction contract and has issued a written Notice to Proceed to the construction contractor.  
  
The County agrees to pay CDOT for a portion of the Work which includes the following: construction, construction management, materials testing, and any other applicable direct and indirect costs. CDOT shall provide a written invoice to the County no later than September 1, 2020 and the County agrees to pay CDOT a lump sum payment of \$2,500,000 no later than November 1, 2020.
- C. The maximum amount payable by the Local Agency under this Contract shall be Two Million Five Hundred Thousand Dollars and no Cents (\$2,500,000.00) unless such amount is increased by an appropriate written modification to this contract executed by the Parties hereto before any increased cost is incurred.
- D. The Parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either Party, provided that any Party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination..

#### Section 5. Project Payment Provisions

- A. The Local Agency will reimburse the State for incurred costs relative to the project following the Local Agency's review and approval of such charges, subject to the terms and conditions of this agreement.
- B. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
  - 1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the Parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
  - 2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.
- C. The State will prepare and submit to the Local Agency, no more than monthly, charges for costs incurred relative to the project. The State's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format.

#### Section 6. State and Local Agency Commitments

The Scope of Work (**Exhibit A**) describes the work to be performed.

- A. Design [if applicable]
  - 1. If the work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the State shall comply with the following requirements, as applicable:
    - a. perform or provide the Plans, to the extent required by the nature of the work.
    - b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
    - c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction.

- d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
- e. stamp the Plans produced by a Colorado Registered Professional Engineer.
- f. provide final assembly of Plans and contract documents.
- g. be responsible for the Plans being accurate and complete.
- h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the Parties. The Plans shall be considered final when approved and accepted by the Parties hereto, and when final they shall be deemed incorporated herein.

**B. Construction [if applicable]**

1. If the work includes construction, the State shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Scope of Work (**Exhibit A**). Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement.
2. Subject to Section 5, if the State 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. if bids are to be let for the construction of the project, the State shall, in conjunction with the Local Agency, advertise the call for bids and upon concurrence by the Local Agency will award the construction contract(s) to the low responsive, responsible bidder(s).
    - (1) in advertising and awarding the bid for the construction of a federal-aid project, the State shall comply with applicable requirements of 23 USC § 112 and 23 CFR Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the State/contractor shall incorporate Form 1273 in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).
    - (2) the Local Agency has the option to concur or not concur in the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare its concurrence or non-concurrence within 3 working days after said bids are publicly opened.
    - (3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the work under this project if no additional federal-aid funds will be made available for the project.
  - c. If all or part of the construction work is to be accomplished by State personnel (i.e. by force account), rather than by a competitive bidding process, the State will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.

**Section 7. ROW Acquisition and Relocation**

If the Project includes right of way, prior to this project being advertised for bids, the State will certify in writing that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all 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, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way 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, the local agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

#### **Section 8. Utilities**

If necessary, the State will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the responsible party will certify in writing that all such clearances have been obtained.

#### **Section 9. Railroads**

In the event the Project involves modification of a railroad company's facilities whereby the work is to be accomplished by railroad company forces, the State shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the work without compliance. The State 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 10. Environmental Obligations**

The State shall perform all work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

#### **Section 11. Maintenance Obligations**

The State will maintain and operate the improvements constructed under this agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The State will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

#### **Section 12. Record Keeping**

The State shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this agreement. The State shall maintain such records for a period of three (3) 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. The State shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the Local Agency and FHWA to inspect the project and to inspect, review and audit the project records.

#### **Section 13. Termination Provisions**

This agreement may be terminated as follows:

- A. Termination for Convenience. The State may terminate this agreement at any time the State determines that the purposes of the distribution of moneys under the agreement would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this agreement, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this agreement, the State shall thereupon have the right to terminate this agreement for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this agreement shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the agreement by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the Parties shall be the same as if the agreement had been terminated for convenience, as described herein.

#### Section 14. Legal Authority

The Local Agency 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 the Local Agency to its terms. The person(s) executing this agreement on behalf of the Local Agency warrants that such person(s) has full authorization to execute this agreement.

#### Section 15. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 01, 2829 W. Howard Pace, Denver, Colorado 80204. Said Region Director will also be responsible for coordinating the State's activities under this agreement and will also issue a "Notice to Proceed" to the Local Agency for commencement of the work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 02 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either Party may from time to time designate in writing new or substitute representatives.

If to the State:

Carrie DeJiacomo , Professional Engineer III  
CDOT Region 01  
2829 W. Howard Place, 2<sup>nd</sup> Floor  
Denver, Co 80204  
(303) 365-7211  
carrie.dejiacono@state.co.us

If to the Local Agency:

Art Griffith, PE  
Douglas County Engineering  
100 Third Street  
Castle Rock, Colorado 80104  
(303-947-8731)  
agriffit@douglas.co.us

#### Section 16. 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 17. 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 the Local Agency. 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 the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.

#### **Section 18. 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 State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

#### **Section 19. 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 20. 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 21. 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 22. 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 the Local Agency.

#### **Section 23. 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 24. 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 by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the 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.

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**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

\* Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency’s behalf and acknowledge that the State is relying on their representations to that effect.

<p><b>LOCAL AGENCY</b></p> <p><b>Douglas County, Colorado</b></p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO</b></p> <p><b>Jared Polis, GOVERNOR</b></p> <p>Colorado Department of Transportation</p> <p>By _____</p> <p>Stephen Harelson, P.E., Chief Engineer (For) Shoshana Lew, Executive Director</p> <p>Date: _____</p>
<p><b>Attest:</b></p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	

## Exhibit A Scope of Work

### CC 0852-106 PCN 18890 US-85 Louviers to MP 191.75

**Work to be performed by Colorado Department of Transportation (CDOT):**

Although CDOT is responsible for all the pre-construction phase activities for the Project, the Work associated with this Contract pertains only to the construction phase activities.

The Work for this Project consists of widening US-85 to four lanes with 10-foot shoulders, reconstructing with concrete pavement, installing inside curb and gutter and a raised median. A storm drain system with inlets and pipes will be installed along with permanent water quality features, utility relocations, permanent signing and striping. Additionally, a bridge will be constructed to replace the existing structure over Sand Creek. A retaining wall will be needed to help with construction of a new access road to properties on the north end of the project. This project will also include constructing steep slopes at a bluff near the south end of the project to provide room for the roadway widening in this area. ROW acquisitions will be required to accommodate all work needed for this project. In order to advance this Project, CDOT agrees to contribute to this Project as described in Section 4.

**Work to be performed by Douglas County/Local Agency:**

In order to advance this Project, Douglas County agrees to contribute to this Project as described in Section 4 for the roadway improvements. The Local Agency funds will not be used for the replacement bridge over Sand Creek, as it is being funded and owned by Bridge Enterprise.