

**INTERGOVERNMENTAL AGREEMENT BETWEEN WELD COUNTY AND
THE CITY OF EVANS FOR THE OVERLAY OF 37th STREET
BETWEEN 23rd AVENUE AND 17th AVENUE**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this _____ day of _____, 2020, by and between Weld County, a body corporate and political subdivision of the State of Colorado, with offices located at 1150 O Street, Greeley, Colorado, 80632, through its Board of County Commissioners (hereinafter referred to as “Weld County”), and the City of Evans, with offices located at 1100 37th Street, Evans, Colorado, 80620, a municipality (hereinafter referred to as “Evans”).

WITNESSETH:

WHEREAS, Weld County and Evans each have jurisdiction of portions of 37th Street between 23rd and 17th Avenue, as depicted in Exhibit A, which is attached hereto and incorporated herein by references; and

WHEREAS, the parties desire to jointly enter into the Scope of Work as shown on Exhibit B, which is attached hereto and incorporated herein by reference; and

WHEREAS, each party wishes to make road improvements to 37th Street in their respective jurisdiction and share the local match costs of a NFRMPO STBG grant for the phased overlay of 37th Street between 23rd Avenue and the railroad tracks on the east side of Hwy 85 (hereinafter referred to as the “Project”); and

WHEREAS, both parties hereto desire to enter into this Agreement for the purpose of defining their respective roles and responsibilities regarding the completion of this project; and

WHEREAS, both parties are authorized to enter into this Agreement by C.R.S. § 29-1-203 and Colorado Constitution Article XIV§ 18(2) (1), for the purpose of achieving greater efficiencies for the provision of services to the public.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS CONTAINED HEREIN, THE ADEQUACY OF WHICH IS ACKNOWLEDGED BY AND BETWEEN THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

1. **MAXIMUM ESTIMATED COSTS**

This is a City of Evans project which, due to the shared value nature of the project, Weld County wishes to assist with in the form of partial local match funding.

The maximum estimated local match cost to each party for the project, is as follows:

City of Evans Budget:	\$621,859.00
Weld County Budget:	<u>\$100,000.00</u>
Total Local Project Budget:	<u>\$721,859.00</u>

It is understood and agreed, by both parties hereto, that the total cost of the local match stated herein is the best estimate prior to bid and award available, and such cost is subject to revision(s) based upon the actual cost of the project. Any revision in cost will not affect Weld County's contribution to this project.

2. RESPONSIBILITY

Weld County agrees to pay \$100,000 to Evans as Weld County's entire financial contribution to the Project upon approval and signing of this Agreement by both parties. All costs for the Project in excess of the \$100,000 paid by Weld County shall be the responsibility of Evans.

Evans will coordinate the phased project construction schedule as specified in Exhibit C, attached hereto and incorporated herein by reference, and shall be responsible for all payments to contractors associated with this project.

3. FUNDING CONTINGENCY

This Agreement is contingent upon all funds designated for the project being made available from Weld County and Evans. Should these sources fail to provide necessary funds as agreed upon herein, this contract may be terminated by either party upon written notice being delivered to the other party.

4. ROADWAY STANDARDS

The parties agree that the project shall be designed and built according to the specifications set forth in the October 16, 2018, Freedom Parkway Access Control Plan, which is incorporated herein by reference.

5. ENTIRE AGREEMENT

This contract, together with the exhibits attached hereto and any other documents incorporated herein by reference, constitutes the entire agreement between the parties with respect to the project, and shall be binding upon the parties, their officers, employees, agents, and assigns, and shall inure to the benefit of any successors and assigns of said parties.

6. NO THIRD-PARTY BENEFICIARY ENFORCEMENT

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all the rights of action relating to such enforcement, shall be strictly reserved to Weld County and Evans, and nothing contained in this Agreement shall give or allow any claim or right of action whatever by any other person on this Agreement. It is the express intention of Weld County and Evans that any entity other than the parties receiving services or benefits under this Agreement, shall be deemed an incidental beneficiary only.

7. GOVERNMENTAL IMMUNITY

No term of condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, or protections provided by common law or state statute, including the Colorado Governmental Immunity Act §§ 24-10-101 et seq., as applicable now, or as hereafter amended.

8. MODIFICATION AND BREACH OF CONTRACT

This Agreement contains the entire agreement and understanding between the parties and supersedes any other agreements concerning the project whether oral or written. No modification, amendment, revocation, renewal, or other alteration of/to this Agreement and the attached schedules, shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the parties.

No breach of any term, provision, or clause of this Agreement or its attached schedules shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party hereto, or waiver of a breach by any other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

9. LEGAL REMEDIES AND RESPONSIBILITIES

This Agreement shall be governed by the laws of the State of Colorado. Any and all legal action necessary to enforce the Agreement will be held in Weld County, Colorado. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing by law, statute, or otherwise, including but not limited to specific performance.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs.

Each party shall be responsible for defending itself and its officers, employees, and assigns in any action brought against that party specifically. Neither party shall be deemed to assume any liability for intentional or negligent acts, errors, or omissions of the other party or the representatives thereof arising out of the project or the terms of this Agreement.

10. SEVERABILITY

If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, this Agreement shall be construed and enforced without such provision to the extent this Agreement is then capable of execution within the original intent of the parties.

11. NOTICES

All notices required herein shall be mailed via First Class Mail to the parties’ representatives at the addresses set forth below.

WELD COUNTY

Attn: Mike Freeman, Board of County
Commissioners Chair
1150 O Street
P.O. Box 758
Greeley, CO 80632
mfreeman@co.weld.co.us

CITY OF EVANS

James Becklenberg, City Manager
1100 37th Street
Evans, CO 80620
jbecklenberg@evanscolorado.gov

12. ACKNOWLEDGEMENT

Weld County and Evans acknowledge that each has read this Agreement, understands it, and agrees to be bound by its terms. Both parties further agree that this Agreement with all attached exhibits and documents incorporated herein by reference, is the complete and exclusive statement of agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF WELD COUNTY, COLORADO

CITY OF EVANS, COLORADO

By: _____
Mike Freeman, Chair

By: _____
Brian Rudy, Mayor

ATTEST:

ATTEST:

By: _____
Deputy County Clerk

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney

APPROVED AS TO SUBSTANCE:

By: _____
City Manager

APPROVED AS TO FINANCING:

By: _____
Jacque Troudt, Finance Director