

(Local \$CDOTWRK)  
PROJECT: I-25 North: SEGMENTS 5 & 6 (18319)  
REGION 4 (dz)

Routing # 18-HA4-XC-00056  
SAP # 331001799  
**FOR CDOT TRACKING PURPOSES**  
(subject to change).

## CONTRACT

**THIS CONTRACT** made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, (the “Contract”) by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation (the “State”) and the City of Greeley (the “Local Agency”), the State and the Local Agency together shall be referred to as the “Parties” and individually as “Party.”

### **RECITALS**

1. The Local Agency has made funds available for Project SEGMENTS 5 & 6 (18319), which shall consist of improvements to I-25, from SH 66 to south of SH 402, between Longmont and Loveland. (the “Project” or “Work”) and desires to contribute funds for the Project, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this Contract and to expend its funds for the Project. A copy of this ordinance or resolutions is attached hereto and incorporated herein as **Exhibit B**.
2. Required approval, clearance, and coordination have 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 has funds available and desires to provide the funding for the improvements, as described in Section 4.
5. Pursuant to CRS § 43-2-104.5, as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the State or Local Agency highway system.
6. The Local Agency anticipates design and construction improvements to I-25, from SH 66 to south of SH 402, between Longmont and Loveland. The State has completed and submitted a preliminary Scope of Work describing the general nature of the Work. The Local Agency understands that before the Work begins, the Scope of Work may be revised as a result of design changes made by the State, in coordination with the Local Agency, in its internal review process.
7. 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 improvements to I-25, from SH 66 to south of SH 402, between Longmont and Loveland, for which the Local Agency shall provide funding and the State shall be responsible for the design and construction of the improvements. The Project will take place from SH 66 to south of SH 402, between Longmont and Loveland, Colorado. The Work includes improvements, constructions and replacements, as described in **Exhibit A**.

### **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 State Controller or designee. The term of this Contract shall continue through the completion and final acceptance of the Project by the State, the Federal Highway Administration ("FHWA"), and the Local Agency.

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

A. The Local Agency is prepared to provide their portion of the funding for the Work, as provided in §4.B and as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this Contract and to expend its funds for the Project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

**B. The maximum amount payable by the Local Agency under this Contract shall be \$500,000.00**, unless such amount is increased by an appropriate written modification to this Contract executed before any increased cost is incurred. It is understood and agreed by the Parties that the total cost of the Work stated herein is the best estimate available, based on the design data as approved at the time of execution of this Contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the Parties prior to bid and award.

C. The Parties 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. After all invoices have been paid in full, any unexpended Local Agency funds will be returned to the City upon such termination.

### **Section 5. Project Payment Provisions**

A. The Local Agency shall 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 Contract.

1. The Local Agency will not be billed for CDOT-incurred costs. The Local Agency shall make the payments set forth on Exhibit A. The parties understand that such payments are expressly conditioned upon annual appropriations by the Greeley City Council.
2. If the costs for the project are less than the total funds allocated to the project, unexpended funds will be refunded in proportion to the City's contributions.

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 shall 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 shall 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 shall be prepared in accordance with the State's standard policies, procedures and standardized billing format.

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

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”), CDOT 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, CDOT shall perform the construction in accordance with the approved design plans. 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. 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 Contract, 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, 23 CFR 633 and 635, and CRS § 24-92-101 *et seq.* Those requirements include, without limitation, that the State and Local Agency 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 (B), Force Account Construction.

### **Section 7. ROW Acquisition and Relocation [if applicable]**

If the Project includes a 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. The Work to be designed and constructed by CDOT under the Project shall be on CDOT right of way (“ROW”).

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 P24); 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 ROW incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in ROW acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or

- No federal participation in ROW 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.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/).

If ROW 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 responsible Party shall 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 shall certify in writing that all such clearances have been obtained.

### **Section 9. Railroads**

Reserved.

### **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 shall maintain and operate the improvements constructed under this Contract 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 shall 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 Contract. The State shall maintain such records for a period of 6 years after the date of termination of this Contract 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 Contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this Contract at any time the State determines that the purposes of the distribution of moneys under the Contract 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 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 Contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract for cause by giving written notice to the Local Agency of its intent to terminate and at least 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 Contract 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. The Local Agency shall be obligated to return any payments advanced under the provisions of this Contract.

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 Contract 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 Contract 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 Contract and that it has taken all actions required by its procedures, by-laws, and applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Local Agency to its terms. The person(s) executing this Contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this Contract.

### **Section 15. Representatives and Notice**

All communications relating to activities for the 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. Either Party may from time to time designate in writing new or substitute representatives.

If to the State:

Katrina Kloberdanz  
CDOT Region 4  
10601 W. 10<sup>th</sup> St.  
Greeley, Colorado 80634  
970.350.2211  
Katrina.Kloberdanz@state.co.us

If to the Local Agency:

Joel Hemesath  
City of Greeley, Public Works Director  
1001 9th Avenue  
Greeley, Colorado 80631  
970.350.9795  
joel.hemesath@greeleygov.com

**Section 16. Successors**

Except as herein otherwise provided, this Contract 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 Contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this Contract 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 Contract shall be deemed an incidental beneficiary only.

**Section 18. Governmental Immunity**

Notwithstanding any other provision of this Contract to the contrary, 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, protection, or other provisions of the Colorado Governmental Immunity Act, CRS § 24-10-101, *et seq.*, 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 CRS § 24-10-101, *et seq.*, as now or hereafter amended and the risk management statutes, CRS § 24-30-1501, *et seq.*, as now or hereafter amended.

**Section 19. Severability**

To the extent that this Contract may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Contract, the terms of this Contract 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 Contract 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 Contract 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 Contract Terms**

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the Contract 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 Contract 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 Contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Contract shall be effective unless agreed to in writing by both Parties in an amendment to this Contract that is properly executed and approved in accordance with applicable law.

### **Section 24. Disputes**

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract 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 Contract 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 Contract, however, shall be construed as making final the

decision of any administrative official, representative, or board on a question of law.

**Remainder of this page intentionally left blank**

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

\* 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 align="center"><b>THE LOCAL AGENCY</b> <b>City of Greeley</b></p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center"><b><u>STATE OF COLORADO</u></b> <b><u>John W. Hickenlooper, GOVERNOR</u></b> Colorado Department of Transportation Shailen P. Bhatt, Executive Director</p> <p>_____</p> <p align="center">By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
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<p align="center">2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center"><b>LEGAL REVIEW</b> Cynthia H. Coffman, Attorney General</p> <p>By: _____</p> <p align="center">Signature - Assistant Attorney General</p>
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**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_  
Colorado Department of Transportation

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

# EXHIBIT A -- STATEMENT OF WORK

## Interstate 25 Segments 5 & 6 Project

### Scope of Work

The Colorado Department of Transportation ("CDOT") will complete the Interstate 25 Segments 5 & 6 Project (Hereinafter referred to as "this work"). The project is located on I-25 approximately from SH 66 to just south of State Highway 402.

Interstate 25 is the primary north-south route through Colorado, and is the only continuous north-south interstate route in the state, providing access to, through, and from northern Colorado. This segment of I-25 currently has two general purpose lanes in each direction. The project adds a third travel lane in both directions to be operated as a tolled express lane which will accommodate high occupancy vehicles and charge tolls.

### Elements of Project Scope:

- Increase capacity by adding an express lane in both directions
- Provide a painted buffer to separate the express lane from general purpose travel
- Construct wider shoulders
- Replace or rehabilitate aging bridges, and widen additional structures
- Improve multi-modal access to regional transit to promote mode shift
- Improve bus service performance and reduce each total trip time by adding new bus slip ramps to access a new Park-n-Ride
- Reconfigure the SH 56 interchange, including straightening mainline I-25 and optimizing the interchange

The City of Greeley will contribute funds for improvements to I-25 included in this work. The initial contribution will be \$500,000.00. Future contributions may be added to this Scope through Amendments.

Local Agency  
Ordinance  
Or  
Resolution