

**INTERGOVERNMENTAL AGREEMENT
FOR CONSTRUCTION OF HIGH PLAINS BOULEVARD (A.K.A. - WELD COUNTY ROAD
9.5) BETWEEN WELD COUNTY ROAD 32 AND WELD COUNTY ROAD 36**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made and entered into as of the date of the last signature below (the “Effective Date”), by and between the Town of Mead, Colorado, a municipal corporation of the State of Colorado, whose address is 441 - 3rd Street, P.O. Box 66, Mead, CO 80542 (“Mead”) and the County of Weld, a political subdivision of the State of Colorado, by and through the Board of County Commissioners of the County of Weld, Colorado, whose address is P.O. Box 758, 1150 “O” Street, Greeley, Colorado 80632 (“Weld County”). Mead and Weld County are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, High Plains Boulevard (HPB) is a planned north-south arterial road on the east side of Interstate 25 (also referred to as Weld County Road 9.5) which, when fully constructed, will run through several jurisdictions in northern Colorado; and

WHEREAS, for purposes of this Agreement, the first segment of HPB will be an interim section extending Weld County Road (“WCR”) 9.5 from WCR 32 to a point north of WCR 34 (as further described in Section 2 below, the “County Project”); and

WHEREAS, for purposes of this Agreement, the second segment of HPB will begin north of the WCR 34/HPB Intersection (defined in Subsection 2(a)iii. below) where the County Project ends and will continue north to WCR 36 (as further described in Section 3 below, the “Developer Project” and together with the County Project, the “Project”); and

WHEREAS, as of the Effective Date, the Project is located within the jurisdictional boundaries of Mead (“Mead’s Boundaries”) and Weld County (the “County Boundaries”); and

WHEREAS, WCR 34 & Hwy 25-220, LLC, a Colorado limited liability company (“W&H”), and Mead Industrial Development, LLC, a Colorado limited liability (“MID”) (collectively, the “Developers”) own most of the land on either side of the Town right-of-way where the Developer Project will be located and said land will benefit substantially from the construction of the Developer Project; and

WHEREAS, the Parties desire to memorialize in this Agreement their agreements and understandings related to the funding, design, and construction of the Project, the acquisition of rights-of-way and easements for the Project, and each Party’s respective role and responsibilities with respect to the same; and

WHEREAS, the Developers’ obligations with respect to the Developer Project, which obligations are only briefly summarized in Section 3 of this Agreement, will be set forth in a separate agreement between Mead and the Developers (the “Developers’ Agreement”); and

WHEREAS, the Parties are authorized to enter into this Agreement by Colorado Revised Statutes (C.R.S.) Section 29-1-203 and the Colorado Constitution Article XIV, Section 18(2).

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. INCORPORATION OF RECITALS: The Recitals set forth above are incorporated and made a part of this Agreement.

2. THE COUNTY PROJECT:

(a) Description of the County Project. The County Project shall consist of:

- i. Designing and constructing an interim cross section of HPB from WCR 32 to WCR 34 and continuing approximately three hundred (300) feet north of the WCR 34/HPB Intersection (defined below). Without limiting the foregoing, the interim cross section shall include: two twelve-foot lanes (one in each direction), paved shoulders in each direction, concrete curb and gutter on the western side of the new roadway, and a 10-foot, detached, two-directional, shared use path on the western side of the new roadway. This interim cross section shall consist of the western half of the ultimate arterial cross section for this segment of HPB.
- ii. Designing and constructing the new interim intersection of HPB and WCR 32 (the “WCR 32/HPB Intersection”). Construction of this intersection shall minimize disruption to the existing 2-lane local east-west roadway, and this intersection shall tie back into the existing roadway as quickly as possible.
- iii. Designing and constructing the new interim intersection of HPB and WCR 34 (the “WCR 34/HPB Intersection”). Improvements at this intersection shall include all necessary interim auxiliary lanes and drainage improvements (including the North Creek floodplain crossing). WCR 34 is classified as an arterial roadway and improvements will need to extend to east and west to accommodate the interim expansion proposed at that location.

(b) Weld County’s role and responsibilities related to the County Project.

- i. Weld County shall serve as the “Lead Agency” for the design, construction, and project management of the County Project. As Lead Agency, Weld County shall be responsible for: overseeing the development and delivery of construction plans; conducting the procurement of a design-build contract in accordance with Weld County’s policies for competitive bidding; providing construction contract management, construction inspection, and quality assurance services; coordinating the design and construction of the County Project with public and private utilities and other agencies; and coordinating and managing public outreach and processes regarding the County Project.
- ii. Weld County shall include in any construction contract for the County Project a minimum two-year warranty period (the “Warranty Period”) on the improvements.
- iii. Weld County shall condemn or otherwise acquire all rights-of-way for the County Project and the ultimate arterial cross section for the County Project segment of HPB, including the ultimate WCR 32/HPB Intersection and

ultimate WCR 34/HPB Intersection, and temporary and permanent easements necessary for construction and ongoing maintenance of the County Project. Weld County will endeavor to acquire right-of-way within Mead's Boundaries in the name of the Town of Mead.

- iv. Subject to Subsections 2(c)i. and 2(c)vii. below, Weld County shall be responsible for all costs related to the County Project.
- v. Prior to releasing the County Project for construction, Weld County shall provide the construction plans for the County Project to Mead for Mead's review and approval. In addition, upon completion of the County's procurement process, Weld County shall notify Mead of the date of commencement of the County Project.
- vi. Weld County shall coordinate as necessary with the Developers on the design and construction, and schedule for construction, of the WCR 34/HPB Intersection.
- vii. Upon completion of the Warranty Period, including any extensions thereof, and the resolution of all warranty issues to Mead's satisfaction, Weld County shall:
 - 1) Submit a written request for final acceptance of the County Project improvements by Mead, which request shall include as-built drawings of the improvements and unconditional lien waivers that all claims and payments to be made in connection with construction of the improvements have been satisfied.
 - 2) Petition Mead to annex: (x) all rights-of-way for the County Project and the ultimate arterial cross section for this segment of HPB, including the ultimate WCR 32/HPB Intersection and ultimate WCR 34/HPB Intersection, located within the County Boundaries; and (y) those portions of the HPB right-of-way between the southernmost point of the County Project and Colorado State Highway 66 (collectively, the "County ROW").
- viii. Upon annexation by Mead of the County ROW, Weld County shall: (x) convey by deed to Mead the County Project any right-of-way (including improvements) located within Mead's Boundaries not previously acquired in the Town of Mead's name; and (y) assign to Mead any easements that were obtained by Weld County for the County Project that are necessary for ongoing repair and maintenance of the County Project improvements.

(c) Mead's role and responsibilities related to the County Project.

- i. If developers of land adjacent to the County Project area and within Mead's Boundaries contribute funds to the County Project, Mead agrees to pay those funds actually received by Mead to Weld County.
- ii. Mead shall have the right to review the final construction plans for the County Project, and Weld County shall not release those final plans for

construction until Mead has approved said plans.

- iii. Mead agrees to allow Weld County to construct the County Project within Mead's Boundaries.
- iv. Mead shall coordinate with Weld County, as necessary, where the Developer Project connects with the County Project on the design, construction, and schedule for construction. Mead shall notify Weld County of the date of commencement of the Developer Project.
- v. Subject to the Parties' compliance with the procedures and requirements of the Colorado Municipal Annexation Act of 1965, C.R.S. §§ 31-12-101 *et seq.*, the making of findings by the Mead Board of Trustees that applicable provisions of Section 30 of Article II of the Colorado Constitution and C.R.S. §§ 31-12-104 and 31-12-105 have been met, Mead agrees to annex the County ROW.
- vi. Upon annexation of the County ROW, resolution of all warranty issues for the County Project improvements to Mead's satisfaction, and receipt of as-built drawings and unconditional lien waivers as provided in Subsection 2(b)vii.1) above, Mead shall finally accept the County Project improvements and the County Project Easements.
- vii. Any cost savings paid to Weld County pursuant to Subsection 3(c)vii) below shall be treated as a proportional share back from Mead to Weld County for the WCR 34/HPB Intersection.

3. THE DEVELOPER PROJECT:

- (a) **Description of the Developer Project.** The Developer Project shall consist of designing and constructing an interim cross section of HPB from approximately three hundred (300) feet north of WCR 34 (i.e., where the County Project ends) to WCR 36 and an interim cross section of WCR 36 from the intersection of WCR 9.5 west to the termination of the WCR 36 Home Depot improvements.
- (b) **Design and construction of the Developer Project.** The Parties acknowledge and agree that the Developers shall be responsible for the design, construction, and project management of the Developer Project, and that details of the Developer Project and the Developers' obligations will be set forth in the Developers' Agreement. Without limiting the foregoing, the Parties further acknowledge and agree that the Developers' Agreement will establish Developers' monetary obligations described in Subsection 3(c) below and will require Developers to complete the Developer Project by December 31, 2025 (the "Developer Project Completion Date"). The Developer Project Completion Date may be extended with the approval of Weld County or by a force majeure event.
- (c) **Developer Project Cost.** The Parties anticipate that the maximum cost for the Developer Project will not exceed Six Million and No/100 Dollars (\$6,000,000.00) (the "Maximum Developer Project Cost"). The cost for the Developer Project shall be paid for and funded as follows:

- i. Pursuant to the Developers' Agreement, the Developers will advance all costs and expenses incurred in connection with the Developers' Project, and Mead will reimburse Developers the costs and expenses so incurred from the Developer Project Account (as such term is defined below); provided, however, that the Town will provide the Developers a one-time advanced disbursement of One Million and No/100 Dollars (\$1,000,000.00) from the Developer Project Account in accordance with the terms set forth in the Developers' Agreement.
- ii. W&H and MID will be required to each contribute One Million and No/100 Dollars (\$1,000,000.00) to the Developer Project, for a total contribution from Developers of Two Million and No/100 Dollars (\$2,000,000.00) (the "Developers' Contribution"). W&H and MID will be required to deposit the full amount of their contributions with Mead prior to commencement of construction of the Developer Project in accordance with the terms set forth in the Developer's Agreement.
- iii. Weld County shall contribute Three Million and No/100 Dollars (\$3,000,000.00) (the "County Contribution") to the Developer Project. This contribution will come from funds originally given to the Colorado Department of Transportation (CDOT) as a contribution toward the I-25 North Express Lanes – Segment 5 project. Weld County shall deposit the full amount of the County Contribution with Mead on or before fifteen (15) days after execution by the Parties of this Agreement. Notwithstanding the foregoing, Weld County may, in its discretion, contribute additional funds if and as they become available to the Developer Project; any such additional contributions shall be treated as County Contributions under this Agreement.
- iv. Mead shall contribute One Million and No/100 Dollars (\$1,000,000.00) ("Mead's Contribution") to the Developer Project. Mead will deposit the full amount of Mead's Contribution into the Developer Project Account (as defined below) prior to commencement of construction of the Developer Project in accordance with the terms set forth in the Developer's Agreement.
- v. Mead shall deposit the Developers' Contribution, the County Contribution, and Mead's Contribution into a separate interest-bearing account for the Developer Project, which account shall be established and managed by the Mead Treasurer (the "Developer Project Account"). Any interest earned on the Developer Project Account shall be credited to the account. The Developers' Agreement will establish a procedure for reimbursing costs and expenses incurred by Developers and Mead for the Developer Project from the Developer Project Account.
- vi. The Developers' Contribution shall be the first dollars spent on the Developer Project. The County Contribution shall be spent only after the full expenditure of the Developers' Contribution, and Mead's Contribution shall be spent only after the full expenditure of the Developers' Contribution and the County Contribution.

- vii. If the actual total cost for the Developer Project is less than the Maximum Developer Project Cost, the cost savings shall be paid to Weld County at the end of the warranty period for the Developer Project; provided, however, if the balance of the Developer Project Account exceeds fifteen percent (15%) of the Maximum Developer Project Cost (the “Warranty Security”) at the time of Mead’s conditional acceptance of the Developer Project, the amount in excess of the Warranty Security shall be paid to Weld County at the time of conditional acceptance.

(d) Weld County’s role and responsibilities related to the Developer Project.

- i. Weld County shall coordinate with Developers as set forth in Subsection 2(b)vi. above.
- ii. Weld County shall contribute funds to the Developer Project as set forth in Subsection 3(c)iii. above.

(e) Mead’s role and responsibilities related to the Developer Project.

- i. Mead shall serve as the reviewing and approval authority for the Developer Project consistent with Mead’s jurisdictional and regulatory authority.
- ii. Mead shall contribute funds to the Developer Project and maintain and distribute funds for the Developer Project as set forth in Subsection 3(c) above.
- iii. As will be set forth in detail in the Developers’ Agreement, in the event the Developers default on their obligation to commence, timely pursue completion of, or complete the Developer Project, Mead shall have the right but not the obligation to complete the Developer Project using funds from the Developer Project Account.

4. TERM: The term of this Agreement shall commence on the Effective Date and shall terminate upon the date that all obligations of the Parties under this Agreement have been satisfied, unless terminated earlier by mutual written agreement of the Parties. In addition, the Parties agree that each Party’s responsibilities under this Agreement are contingent upon the availability and appropriation of funds by Mead and Weld County. If either Party determines that it will be unable to fund the Project as provided in Subsections 3(c)ii. and 3(c)iii. above, then this Agreement may be terminated by either Party upon written notice being delivered to the other Party.

5. ENTIRE AGREEMENT; AMENDMENTS: This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes all prior contracts, proposals, representations, negotiations, letters of intent, whether written or oral, pertaining to the subject matter of this Agreement. No changes, alterations, or modifications to any of the provisions of this Agreement shall be effective unless contained in a written agreement signed by the Parties.

6. ASSIGNMENT: A Party shall not assign this Agreement or any rights or obligations of such Party under this Agreement without the prior written consent of the other Party.

7. **BINDING AGREEMENT:** This Agreement shall be binding upon and for the benefit of the Parties, their successors and assigns.
8. **NO THIRD-PARTY BENEFICIARIES:** This Agreement shall not confer any rights or remedies upon any person other than Weld County and Mead and their respect successors and assigns.
9. **CHOICE OF LAW; VENUE:** This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the Parties, the exclusive venue for dispute resolution shall be the District Court for and in Weld County, Colorado.
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 that this Agreement is then capable of execution within the original intent of the Parties.
11. **NOTICES:** All notices or demands desired or required under this Agreement shall be deemed given: (i) when personally delivered; or (ii) after the lapse of five (5) days after mailing by registered or certified mail, postage pre-paid; or (iii) when sent by confirmed electronic mail, and addressed as follows:

To Mead: Erika Rasmussen
Town Engineer/Public Works Director
1341 WCR 34
Mead, CO 80542
E-Mail: erasmussen@townofmead.org

To Weld County: Curtis Hall
Public Works Director
P.O. Box 758, 1111 "H" Street
Greeley, CO 80632
E-Mail: chall@weld.gov

12. **NO WAIVER OF GOVERNMENTAL IMMUNITY; INSURANCE:** 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, protections, or other provisions of the Colorado Governmental Immunity Act, CR.S. §§24-10-101 *et seq.*, as applicable now or hereafter amended. Both Weld County and Mead shall name the other as additional insured for all standard coverages provided in each Party's general liability policy(ies) and covering liability of the insured arising out of bodily injury and/or property damage in connection with the work performed by either Party pursuant to the terms of this Agreement.
13. **SUBJECT TO APPROPRIATION:** The Parties understand and acknowledge that Mead and Weld County are subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR as no future appropriation of funds beyond the current fiscal year

is anticipated or expected. Notwithstanding anything in this Agreement to the contrary, all payment obligations of the Parties are expressly dependent and conditioned upon the continuing availability of funds for such party beyond the term of the party's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the individual paying party and other applicable law.

14. EXECUTION BY COUNTERPARTS; ELECTRONIC SIGNATURES: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24 71.3 101 to -121. 20.

15. AUTHORITY TO ENTER AGREEMENT: The signatures of those representatives of the Parties below affirm that they are authorized to enter into and execute this Agreement and that all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize the execution of this Agreement have been made.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Signature Pages Follow.

ATTEST:

TOWN OF MEAD, COLORADO

By: _____
Mary E. Strutt, Town Clerk

By: _____
Colleen G. Whitlow, Mayor

APPROVED AS TO FORM:

By: _____
Marcus McAskin, Town Attorney

**ATTEST:
WELD COUNTY Clerk to the Board**

**BOARD OF COUNTY COMMISSIONERS
WELD COUNTY, COLORADO**

By: _____
Esther Gesick, Clerk to the Board

By: _____
Kevin Ross, Chair