

RESOLUTION NO. 88-19

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AND ADMINISTER THE INTERGOVERNMENTAL AGREEMENTS BETWEEN THE CITY OF COLORADO SPRINGS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE CONSTRUCTION MANAGEMENT AND THE MAINTENANCE AND OPERATIONS OBLIGATIONS ASSOCIATED WITH THE EXTENSION OF STATE HIGHWAY 21 BETWEEN I-25 EXPRESSWAY AND VOYAGER PARKWAY

WHEREAS, the City of Colorado Springs ("City") is contracting with the Colorado Department of Transportation ("CDOT") for the construction management for the new construction on SH 21 between I-25 and Voyager Parkway, which is identified as Project STM 0252-464 (22057) ("the Project") and the maintenance and operations obligations for the Project; and

WHEREAS, pursuant to Colorado Revised Statutes § 29-1-203, the City Council has the authority to approve Intergovernmental Agreements (the "IGAs") between the City and CDOT; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. The IGA between the City of Colorado Springs and the Colorado Department of Transportation for the construction management for the new construction on State Highway 21 between I-25 and Voyager Parkway, a copy of which is attached and incorporated herein as Exhibit A, is hereby approved.

Section 2. The IGA between the City of Colorado Springs and the Colorado Department of Transportation for the maintenance and operations obligations related to the Project, a copy of which is attached and incorporated herein as Exhibit B, is hereby approved.

Section 3. The Mayor is hereby authorized to execute and administer the IGA.

Dated at Colorado Springs, Colorado this 24<sup>th</sup> day of September, 2019.

ATTEST:

  
Sarah B. Johnson, City Clerk



  
\_\_\_\_\_  
Council President

(Local \$CDOTWRK)  
PROJECT: STM 0252-464 (22057)  
Construction Management – SH 21 between I-25 &  
Voyager

## CONTRACT

THIS CONTRACT, executed this 18<sup>th</sup> day of October, 2019 by and between the State of Colorado, for the use and benefit of the Colorado Department of Transportation (“State” or “CDOT”) and the CITY OF COLORADO SPRINGS, COLORADO, a home rule city and Colorado municipal corporation, 30 South Nevada Avenue, Colorado Springs, Colorado, 80903, CDOT Vendor #: 2000015, hereinafter referred to as the “City” or the “Local Agency”, CDOT and the Local Agency individually shall be referred to as “Party”, and together shall be referred to as the “Parties.”

## RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
2. Section 43-2-102 and 103, C.R.S require the State to maintain state highways (including where such highways extend through a city or an incorporated town), and 43-2-135 describes certain specific responsibilities of the State and affected local entities (respectively) with respect to state highways that are also part of a local street system;
3. The Local Agency has estimated the contribution and, by and through intergovernmental agreement with the Copper Ridge Metropolitan District (“District”), has received District’s enforceable commitment to provide funds for Local Agency’s contribution toward the Project (“IGA”). On that basis, Local Agency is prepared to provide the funding required for their contribution toward 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 agreement and to expend its funds for the Contribution
4. The Local Agency will have funds available and desires to provide 100% of the funding for the Work.
5. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S.
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 the construction management for the new construction on SH 21 between Voyager Parkway and I-25 built as part of the Project in the City, as more specifically 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 agreement 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, FHWA and the Local Agency.

#### Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the Contribution and through the IGA is prepared to provide its funding, as evidenced by the signing of this Contract, which expressly authorizes the Local Agency the authority to expend its Contribution toward the Project.
- B. The contribution is estimated to be a not to exceed amount of \$82,000.00.
- C. **The maximum amount payable by the Local Agency under this contract shall be \$82,000.00** 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 and the District, 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**

Maintenance and Operations of the project is the subject of a separate agreement by and between the Parties.

#### **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 2, 5615 Wills Boulevard, Pueblo, CO 81008. 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 work shall be exchanged between representatives of the State's Transportation Region 1 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:**

Andrew Stecklein, P.E.  
CDOT Region 2 North Program  
1480 Quail Lake Loop  
Colorado Springs, Colorado 80906  
(719) 227-3264  
andrew.stecklein@state.co.us

**If to the Local Agency:**

Travis W. Easton, P.E.  
Public Works Director, City of Colorado Springs  
30 S. Nevada Avenue, Suite 401  
Colorado Springs, Colorado 80901  
(719) 385-5457  
teaston@springsgov.org

#### **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.

#### **Section 25. Delegation**

Local Agency may delegate any and all of its obligations under this agreement to the District; provided, however, that such delegation shall not operate as a release by CDOT of City's obligations hereunder.

**Section 26. Colorado Special Provisions**

These Special Provisions apply to all contracts except where noted in *italics*

- A. 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.
- B. 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.
- C. 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.
- D. INDEPENDENT CONTRACTOR**  
The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Local Agency nor any agent or employee of the Local Agency shall be deemed to be an agent or employee of the State. The 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. **The 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 the Local Agency or any of its agents or employees. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. The 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.**
- E. COMPLIANCE WITH LAW.**  
Contractor 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.
- F. 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.
- G. PROHIBITED TERMS.**  
Any term included in this Contract that requires the State to indemnify or hold the Local Agency harmless; requires the State to agree to binding arbitration; limits the 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. Any term included in this Contract that limits the Local Agency's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.
- H. 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. The Local Agency hereby certifies and warrants that, during the term of this Contract and any extensions, the 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 the 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.



- I. 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. The 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 the Local Agency's services and the Local Agency shall not employ any person having such known interests.
- J. 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 the Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by the 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 the Local Agency, or by any other appropriate method for collecting debts owed to the State.
- K. 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]* the 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., the 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 the Local Agency that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. The 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 the 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 the Local Agency participates in the Department program, the Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that the 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 the 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, the Local Agency shall be liable for damages.
- L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.**  
The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that the 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.

**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>THE LOCAL AGENCY CITY OF COLORADO SPRINGS</b></p> <p>Print: <u>John W. Suthers</u></p> <p>Title: <u>Mayor of Colorado Springs</u></p> <p><u><i>John W. Suthers</i></u> *Signature</p> <p>Date: <u>10/11/2019</u></p>	<p><b>STATE OF COLORADO Jared S. Polis, GOVERNOR Colorado Department of Transportation</b></p> <p>By <u><i>[Signature]</i></u> Joshua Laipply, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director <i>Stephen H. Carlson, P.E. Chief Engineer</i></p> <p>Date: <u>10 Oct 2019</u></p>
<p>2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____ *Signature</p> <p>Date: _____</p>	

## **EXHIBIT A – SCOPE OF WORK (State Highway 21 – I-25 to Voyager Parkway)**

### **1. ATTACHMENTS**

Limits of Maintenance Responsibilities, ROW and Easements, Areas of Parties' Responsibilities

### **2. DEFINITIONS**

In addition to the terms defined in the Contract, the following list of terms shall be construed and interpreted as follows:

- A. “**Key Personnel**” means the position or positions that are specifically designated as such in this Exhibit A.
- B. “**Other Personnel**” means individuals and Subcontractors, in addition to Key Personnel, assigned to positions to complete tasks associated with the Work.

### **3. GENERAL INFORMATION**

The Project is to be constructed within CDOT ROW and will become part of existing State Highway 21.

### **4. CITY'S GENERAL RESPONSIBILITIES**

- A. The City shall design and construct the project to full AASHTO standards. The final design and any design variances will be subject to CDOT and FHWA approval. The design of the Project shall utilize the following CDOT documents:
  - a. Latest CDOT M&S Standards
  - b. 2017 Standard Specifications Book (CDOT Spec Book) and latest Standard Special Provisions
- B. The City shall be responsible for the preparation of all documentation necessary to obtain FHWA approval of an Interchange Access Request (IAR) and CDOT approval of a 1601 request, as necessary.
- C. The City shall work cooperatively with CDOT staff and, if applicable, the staff of other State representatives to ensure the completion of the Work identified in this **Exhibit A**. CDOT may, in its sole discretion, use other contractors to perform activities related to the Work that are not contained in the Contract or to perform any of CDOT's responsibilities. In the event of a conflict between the contractor constructing the Project and any other State contractor, CDOT will resolve the conflict and the City shall abide by the resolution provided by CDOT as well as ensure the contractor constructing the Project shall abide by the resolution provided by CDOT.
- D. The City shall provide qualified Key Personnel and Other Personnel as necessary to perform the Work throughout the term of the Contract. The City shall provide CDOT

with a final list of all Key Personnel and Other Personnel assigned to the Work and appropriate contact information for those individuals, and shall update the list to CDOT upon change of any such personnel.

- E. The City shall ensure all Key Personnel and Other Personnel assigned to the Work pursuant to the Contract are available for contact with CDOT during CDOT's normal business hours, as determined by CDOT. The City shall also ensure the contractor constructing the Project shall also make these personnel available outside of CDOT's normal business hours and on weekends with prior notice from CDOT.
- F. The City shall provide funding for CDOT construction management staff to be onsite during construction. The CDOT construction management staff shall consist of one Professional Engineer and one Structural Engineer, whose billing rates shall each be \$50.00 per hour and whose total hours are estimated to be 1500, for a not to exceed cost to the City of \$75,000.00.
- G. The City shall provide funding for CDOT personnel performing Independent Assurance Testing (IAT) for the project. CDOT shall provide one materials tester, whose billing rate shall be \$30.00 per hour and whose total hours are estimated to be 230, for a not to exceed cost to the City of \$7,000.00. Total billable dollars by CDOT to the City for all construction management and IAT for the project shall not exceed \$82,000.00.
- H. The City shall ensure the construction of the project follows the procedures in the latest edition of the following CDOT documents:
  - a. CDOT Local Agency Manual
  - b. CDOT Standard Specification for Road & Bridge Construction
  - c. Applicable CDOT M&S Standards
  - d. City of Colorado Springs Standard Drawings
  - e. Pikes Peak Region Asphalt Paving Specification
  - f. CDOT Survey Manual
  - g. CDOT Field Materials Manual
  - h. CDOT Fabrication of Inspection of Pre-stressed and Precast Products Manual
  - i. Manual on Uniform Traffic Control Devices (MUTCD)
  - j. CDOT Construction Manual
  - k. CDOT Bridge Fabrication Inspection Manual
  - l. CDOT Quality Control Training Manual
- I. The City will obtain all necessary permits for the construction of the Project and will be responsible for compliance with all permits. The City will be responsible for any infractions or findings in violation of any Project permits, e.g., dewatering permit, Colorado Discharge Permit System (CDPS) Stormwater Construction Permit (SCP), Access Permit, Special Use Permit, MS4 Permit, etc.
- J. Until the Project is complete and accepted, the City will be fully responsible for all

elements of the Project.

- K. The City may delegate any and all of its obligations under this agreement to the District; provided, however, that such delegation shall not operate as a release by CDOT of City's obligations hereunder.

#### **5. CDOT'S GENERAL RESPONSIBILITIES**

- A. CDOT will review preliminary and final plans and specifications, and provide formal comments, within 2 weeks of receipt.
- B. Within 1 week of receipt of a design variance request by the City, CDOT will either approve the request or provide specific reasons for rejection.
- C. CDOT will provide a full time staff person during construction. This person will have experience as a Project Engineer on CDOT construction projects. This person will have authority to stop work on the project due to safety concerns, apparent violations of permits, inadequate traffic control, continued pattern of poor quality control, etc.
- D. CDOT will provide the Independent Assurance Testing for this project.
- E. All fees to CDOT for the City's access to perform the Work will be waived. CDOT will issue a no-fee access permit or permits to the City for the City's performance of the Work. CDOT's access permit shall specify the point of access for the City's Work.

EXHIBIT A

PROJECT AREA

