

RESOLUTION NO. 73-16

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A REVISED AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) REGARDING FUNDING OF THE WOODMEN ROAD WIDENING PROJECT

WHEREAS, by Resolution No. 42-14, City Council authorized the Mayor to execute Contract CMS No. 14 HA2 66003, Project # STU M240-148 (19450) ("IGA") with the Colorado Department of Transportation ("CDOT") regarding funding of the Woodmen Road Widening Project (I-25 to Powers Boulevard) (the "Project"); and

WHEREAS, CDOT and the Federal Highway Administration requested an amendment, which is identified as Amendment No. 1 to Original Contract CMS No. 14 HA2 66003, Project # STU M240-148 (19450) ("Amendment"), to the IGA to increase funding for the Project and move funding from the Right of Way and Design Phases of the Project to the Construction Phase of the Project; and

WHEREAS, by Resolution 44-16, City Council approved the Amendment and authorized the Mayor to execute the Amendment; and

WHEREAS, subsequent to City Council's approval of the Amendment and prior to the execution thereof by CDOT, CDOT requested a change to the Amendment, namely an increase to the amount of funds to be encumbered for the Construction Phase of the Project; and

WHEREAS, the City's Public Works Department recommends approval of the proposed revised Amendment, a copy of which is attached hereto and incorporated herein.

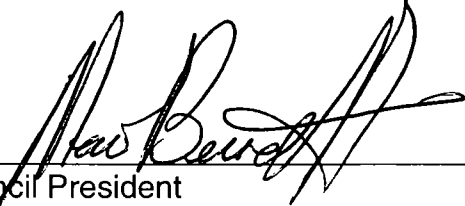
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council hereby approves the revised Amendment.

Section 2. The Mayor is hereby authorized to execute the revised Amendment and any subsequent amendments to the IGA that do not increase or decrease the amount of CDOT funding for the Project or expand or decrease the scope of the Project.

Section 3. Any amendments to the IGA that would increase or decrease the amount of CDOT funding for the Project or expand or decrease the Project scope must be approved by City Council resolution.


Dated at Colorado Springs, Colorado this 26th day of July, 2016.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



AMENDMENT

Amendment No.:	Original Agreement Routing No.:	Amendment Routing No.:
1	14 HA2 66003	14-HA2-XC-00138-ZM0003

1. PARTIES

This Amendment to the above-referenced Original Agreement (hereinafter called the “Agreement”) is entered into by and between City of Colorado Springs (hereinafter called the “Local Agency”), and the State of Colorado (hereinafter called the “State”) acting by and through the Department of Transportation, (hereinafter called “CDOT”).

2. EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. FACTUAL RECITALS

The Parties entered into the Agreement to widen Woodmen Road from a 4-lane section that exists between Stinson and Lexington to a 6-lane section, improve intersection capability and add bicycle lanes between Lexington and Powers Boulevard.

4. CONSIDERATION – COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Agreement and any modification thereto were effective) as part consideration for this Amendment.

5. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6. MODIFICATIONS

The Agreement and all prior amendments thereto, if any, are modified as follows:

- a) decrease ROW Phase encumbrance of \$500,000.00 by \$23,078.00 to a new ROW Phase encumbrance of \$476,922.00;
- b) decrease Design Phase encumbrance of \$1,000,000.00 by \$651,290.00 to a new Design Phase encumbrance of \$348,710.00;
- c) encumber Construction Phase funds of \$10,559,548.00;
- d) increase the federal funds of \$4,098,215.00 by \$6,007,929.00 to a new total of \$10,106,144.00;
- e) increase the Local Agency matching funds of \$851,918.00 by \$1,248,900.00 to a new total of \$2,100,818.00;
- f) increase the total budgeted funds of \$4,950,133.00 by \$7,256,829.00 to 12,206,962.00; and
- g) Exhibit C-1 shall be replaced by Exhibit C-2. Any reference in the Agreement, as previously modified, to Exhibit C or C-1 shall be a reference to Exhibit C-2.

7. EFFECTIVE DATE OF AMENDMENT

The effective date hereof is upon approval of the State Controller or their delegate.

8. ORDER OF PRECEDENCE

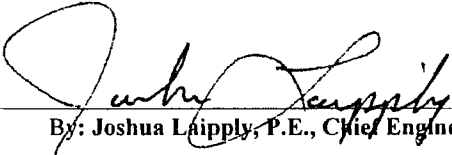
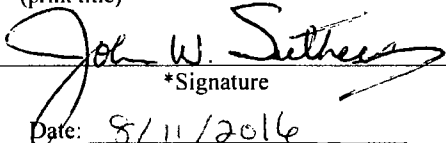
Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Agreement or any amendment shall always control other provisions in the Agreement or any amendments.

9. AVAILABLE FUNDS

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

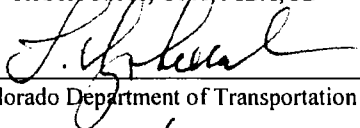
THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENT AGREEMENT

*** 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.**

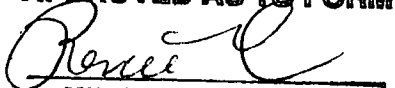
STATE OF COLORADO John W. Hickenlooper, GOVERNOR	
LOCAL AGENCY CITY OF COLORADO SPRINGS	COLORADO DEPARTMENT OF TRANSPORTATION Shailen P. Bhatt, Executive Director
Name: <u>John Suthers</u> (print name)	 By: Joshua Laipply, P.E., Chief Engineer
Title: <u>Mayor</u> (print title)	
 *Signature	
Date: <u>8/11/2016</u>	Date: <u>8/19/2016</u>
Additional Local Agency Signature (If Necessary)	LEGAL REVIEW Cynthia H. Coffman, Attorney General
Name: _____ (print name)	<u>N/A</u>
Title: _____ (print title)	By: Assistant Attorney General
_____ *Signature	Date: _____
Date: _____	

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD
By:  Colorado Department of Transportation
Date: <u>8/29/16</u>

APPROVED AS TO FORM


MUNICIPAL ATTORNEY
CITY OF COLORADO SPRINGS

30. EXHIBIT C-2 – FUNDING PROVISIONS

STU M240-148 (19450)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work to be \$12,206,962.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds (82.79% of Participating Costs)				\$10,106,144.00
b. Local Agency Matching Funds (17.21% of Participating Costs)				\$2,100,818.00
TOTAL BUDGETED FUNDS				\$12,206,962.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
(0% of Participating Costs)				
b. Local Share				\$0.00
Local Agency Share of Participating Costs		\$0.00		
Local Agency Share of Non-Participating Costs		\$0.00		
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$10,106,144.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
c. State Funds Budgeted (1c)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$10,106,144.00
FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$12,206,962.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109 (Federal share of \$680,353.00 and Local Agency share of \$141,429.00)				\$821,782.00
Net to be encumbered as follows:				\$11,385,180.00
WBS Element 19450.10.10	ROW	3114		\$476,922.00
WBS Element 19450.10.30	Design	3020		\$348,710.00
WBS Element 19450.20.10	Const	3301		\$10,559,548.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20.205) to 17.21% Local Agency funds, it being understood that such ratio applies only to the \$12,206,962.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$12,206,962.00, and additional federal funds are made available for the Work, the Local Agency shall pay 17.21% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$12,206,962.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$9,425,791.00 (total federal funds of \$10,106,144.00 minus federal share of ROW Acquisition 3111 and/or ROW Relocation 3109 of \$680,353.00 [the ROW Acquisition funds of \$821,782.00 will be encumbered and paid through the Fair Market Value process and not through this Agreement]; for CDOT accounting purposes, the federal funds of \$9,425,791.00 and the Local Agency matching funds of \$1,959,389.00 [total Local Agency matching funds of \$2,100,818.00 minus Local Agency share of ROW Acquisition 3111 and/or ROW Relocation 3109 of \$141,429.00] will be encumbered for a total encumbrance of \$11,385,180.00), unless such amount is decreased as described in Sections B. and C. 1. of this **Exhibit C-2**, or increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, 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.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than \$750,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure more than \$750,000-Highway Funds Only

If the Local Agency expends more than \$750,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure more than \$750,000-Multiple Funding Sources

If the Local Agency expends more than \$750,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.