

(Local \$CDOTWRK)
PROJECT: IM 0252-423 (19039)
I/25/CIMARRON STREET INTERCHANGE
LANDSCAPING FUNDING
REGION: 2 (vjm)

CONTRACT

THIS CONTRACT, executed this ____ day of _____, 2019 by and between the State of Colorado, for the use and benefit of the Colorado Department of Transportation (the “State” or “CDOT”), the City of Colorado Springs, a Colorado home rule city and municipal corporation, CDOT Vendor # 2000015 (the “Local Agency”, the “City” or “Contractor”), and the Pikes Peak Rural Transportation Authority, a body corporate and a political subdivision of the state of Colorado, CDOT Vendor #: 2100075 (“PPRTA”). The State, the Local Agency and PPRTA shall individually be referred to as a “Party”, and together shall be collectively referred to as the “Parties.”

RECITALS

1. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
2. Sections 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 Section 43-2-135, C.R.S. 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 designed specialized landscaping to be installed at the I-25/Cimarron Street Interchange in Colorado Springs, Colorado, specifically depicted and described in the Scope of Work (**Exhibit A**), at a cost totalling \$1,500,000.00 (the “Project”).
3. The Local Agency previously entered into an Intergovernmental Agreement with CDOT dated August 1, 2017, OLA #: 331001611, Routing #: 17-HA2-XC-00001 (the “IGA”) for funding the Project, and to contribute the \$1,500,000.00 funding for the Project (the “Contribution”).
4. The Local Agency and PPRTA now desire to equally fund the Contribution for the Project for the amounts shown herein. The Local Agency and PPRTA have funds available and each desire to provide 50%, respectively, of the \$1,500,000.00 Contribution for funding of the Project, subject to each’s respective annual budgeting and appropriations.
5. The Local Agency may evidence by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency its express authorization to enter into this agreement and to expend its funds for its \$750,000.00 share of the Contribution. Any such ordinance or resolution is attached hereto as **Exhibit B** and incorporated herein by this reference.

6. PPRTA's \$750,000.00 share of the Contribution for the Project has been approved by vote of the Board of Directors as a project eligible for funding through PPRTA, which \$750,000.00 cash Contribution is PPRTA's total cash Contribution to and for the Project.
7. 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., and **Exhibit B** (if applicable).
8. 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 installation of specialized landscaping at the I-25/Cimarron Street Interchange in Colorado Springs, Colorado, as specifically depicted and described in the Scope of Work (**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); and
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 December 31, 2019.

Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the Contribution and it and PPRTA are each prepared to provide 50% of funding of the Contribution, as evidenced by the signing of this contract, which expressly authorizes the Local Agency and PPRTA, respectively, the authority to expend its share of the Contribution toward the Project.
- B. The contribution is estimated to be \$1,500,000.00. CDOT invoices to the Local Agency for actual funds expended will be sent to the City. The City shall immediately forward all CDOT invoices to PPRTA, and the City and PPRTA shall each thereupon make payment of their respective 50% shares of the amount of each invoice to CDOT.
- C. **The maximum amount payable by the Local Agency under this contract shall be \$750,000.00** 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 maximum amount payable by PPRTA under this contract shall be \$750,000.00** unless such amount is increased by an appropriate written modification to this contract executed by the Parties hereto before any increased cost is incurred.

Section 5. Project Payment Provisions

- A. The Local Agency and PPRTA shall reimburse the State for incurred costs relative to the Project following their respective review and approval of such charges, subject to the terms and conditions of this agreement.
- B. If the Local Agency and PPRTA are 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 submit each bill to PPRTA. The Local Agency and PPRTA shall each remit to the State 50% of the amount billed no later than 30 days after receipt of each bill. Should the Local Agency and/or PPRTA fail to pay moneys due the State within 30 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 and/or PPRTA fail to make timely payment to the State as required by this section (within 30 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 and PPRTA, 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, 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 and/or PPRTA shall immediately convey title to such right of way to CDOT after the Local Agency and/or PPRTA obtain(s) 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

The Local Agency will maintain and operate the improvements constructed under this agreement at its own cost and expense during their useful life, in a manner satisfactory to the State. The Local Agency 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 will 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 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, PPRTA and FHWA (if applicable) 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 PPRTA 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 and/or PPRTA shall fail to fulfill, in a timely and proper manner, its obligations under this agreement, or if the Local Agency and/or PPRTA 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 and PPRTA 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 and/or PPRTA under this agreement shall, at the option of the State, become its property, and the Local Agency and/or PPRTA shall be entitled to receive just and equitable compensation for any services and supplies delivered by and accepted from each of them respectively.

Notwithstanding the above, the Local Agency and/or PPRTA 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/or PPRTA, and the State may withhold payment to the Local Agency and/or PPRTA for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency and/or PPRTA is determined.

If after such termination it is determined, for any reason, that the Local Agency and/or PPRTA was not in default or that the Local Agency's and/or PPRTA'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 and PPRTA each 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 and PPRTA to its terms. The persons executing this agreement on behalf of the Local Agency and PPRTA each warrants that each such person 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, 905 Erie Avenue, Pueblo, CO 81001. Said Region Director will also be responsible for coordinating the State's activities under this agreement and will also issue a "Notice to Proceed" for the work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 2, the Local Agency and PPRTA. 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:
Daid Watt, P.E.
CDOT Region 2
1480 Quail Lake Loop
Colorado Spring, Colorado 80906
719-227-3202
david.watt@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 80601
719-385-5457
teaston@springsgov.com

If to PPRTA:
Rick Sonnenburg
Pikes Peak Rural Transportation Authority
15 South 7th Street
Colorado Springs, CO 80905
719-471-7080, ext. 138
rsonnenburg@ppacg.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, the Local Agency and PPRTA. 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, the Local Agency and PPRTA that any such person or entity, other than the State, the Local Agency or PPRTA 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 Parties, and their respective 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 and/or PPRTA.

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 all of the Parties hereto 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 and/or PPRTA 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 and/or PPRTA 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 and/or PPRTA 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.

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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.

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| <p>THE LOCAL AGENCY City of Colorado Springs</p> <p>By: Title:</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p> | <p>STATE OF COLORADO Jared S. Polis, GOVERNOR Colorado Department of Transportation</p> <p>By _____</p> <p>Joshua Laipply, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director</p> <p>Date: _____</p> |
| <p>Additional Local Agency Signature (if Necessary)</p> <p>By: Title:</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p> | <p>PIKES PEAK RURAL TRANSPORTATION AUTHORITY</p> <p>By: Title:</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p> <p>Additional Pikes Peak Rural Transportation Authority (if Necessary)</p> <p>By: Title:</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p> |