

RESOLUTION 2016-077
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE THE INTERGOVERNMENTAL
AGREEMENT FOR FUNDING I-25 IMPROVEMENTS

WHEREAS, Interstate 25 (“I-25”) serves as the primary north-south highway connection for Northern Colorado, including Larimer County, Colorado (“County”), the City of Fort Collins, Colorado (“City”), and the City of Loveland, Colorado, the Town of Estes Park, Colorado, the Town of Timnath, Colorado, the Town of Berthoud, Colorado, the Town of Windsor, Colorado, the Town of Wellington, Colorado, and the Town of Johnstown, Colorado (individually referred to as “Municipality” or collectively as “Municipalities”).

WHEREAS, I-25 is the primary roadway route for regional connectivity to commerce, health care, education and employment; and

WHEREAS, I-25 is designated as a federal freight route; and

WHEREAS, I-25 in Northern Colorado is considered significantly congested such that traffic flow is impaired and quality of life is adversely affected; and

WHEREAS, the Colorado Department of Transportation (“CDOT”) completed an Environmental Impact Statement in August 2011 that identified and evaluated multi-modal transportation improvements along approximately 60 miles of the I-25 corridor from the Fort Collins/Wellington area to Denver and identified areas of I-25 and associated structures such as bridges that needed to be expanded and/or improved; and

WHEREAS, CDOT has proposed to expand I-25 from two lanes (north and south) to three lanes (north and south) for approximately fourteen miles between State Highway 14 and State Highway 402, replace the Cache la Poudre Bridge and the Union Pacific Railroad Bridge north of State Highway 34, expand the Kendall Parkway Crossing under I-25 and expand the Bridge over the Big Thompson River and the Bridge over the Great Western Railway to accommodate a third travel lane (collectively “Project”); and

WHEREAS, funding for the Project is proposed to include contributions from government at federal, state, county, and municipal levels and other sources; and

WHEREAS, increased property values for Larimer County property owners in 2015 have provided an opportunity to increase the County Road and Bridge Mill Levy within the County’s total Mill Levy commencing in 2016 and for a period of four years thereafter without detriment to other County programs, without decreasing the amount shared back to the Municipalities in 2015 pursuant to C.R.S. §43-2-202(2), and without increasing the total County Mill Levy; and

WHEREAS, the increased County Road and Bridge Mill Levy is projected to generate additional revenues to the Municipalities, including the City, of approximately \$10 million over five years commencing with calendar year 2016, and

WHEREAS, on November 17, 2015, City Council adopted Resolution 2015-100 expressing its support for and willingness to contribute funds to County annually for five years for CDOT's use on the Project; and

WHEREAS, each of the Municipalities has also adopted a Resolution expressing its support for and willingness to contribute funds to County annually for five years for CDOT's use on the Project; and

WHEREAS, C.R.S. §43-2-202(4), requires that the City and each Municipality spend its share of the County Road and Bridge Mill Levy revenues for the construction of roads and streets located within its corporate boundaries and the City; and

WHEREAS, the increase in the City's share of the County Road and Bridge Mill Levy revenues will be utilized to fund construction of roads and streets within its corporate boundaries, making funds available from the City's general fund or other designated fund for contribution to the Project in an amount equal to its share of increased County Road and Bridge Mill Levy revenues; and

WHEREAS, the City's contribution to the Project will serve a public purpose by producing significant economic benefits to the citizens of Fort Collins, including preserving the economic vitality of the City, maintaining and increasing employment in the City, stabilizing and improving the long term tax base of the City, and providing additional economic health benefits and improvements to the quality of life for the City citizens by improving transportation facilities connecting the City and its citizens to commerce, health care, education and employment in the Northern Colorado region; and

WHEREAS, in light of the benefits to the City and its citizens, it is in the best interest of the City to enter into an agreement with the County and the Municipalities to fund the Project; and

WHEREAS, the City, the County and the Municipalities are authorized pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That the Mayor is hereby authorized to execute the Intergovernmental Agreement for Funding I-25 Improvements substantially in the form attached hereto as Exhibit "A," with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of October, A.D. 2016.


Mayor

ATTEST:


City Clerk



**INTERGOVERNMENTAL AGREEMENT FOR FUNDING
I-25 IMPROVEMENTS**

This Intergovernmental Agreement for Funding I-25 Improvements (“Agreement”) is made and effective on _____, 2016, by and among the Board of County Commissioners of Larimer County, Colorado (referred to as “County”), and the City of Fort Collins, Colorado, the City of Loveland, Colorado, the Town of Estes Park, Colorado, the Town of Timnath, Colorado, the Town of Berthoud, Colorado, the Town of Windsor, Colorado, the Town of Wellington, Colorado, and the Town of Johnstown, Colorado (individually referred to as “Municipality” or collectively as “Municipalities”). (The County and Municipalities will jointly be referred to as the “Parties.”)

I. RECITALS

A. Interstate 25 (“I-25”) serves as the primary north-south highway connection for Northern Colorado, including the County and the Municipalities.

B. I-25 is the primary roadway route for regional connectivity to commerce, health care, education and employment.

C. I-25 is designated as a federal freight route.

D. I-25 in Northern Colorado is considered significantly congested such that traffic flow is impaired and quality of life is adversely affected.

E. The Colorado Department of Transportation (“CDOT”) completed an Environmental Impact Statement in August 2011 that identified and evaluated multi-modal transportation improvements along approximately 60 miles of the I-25 corridor from the Fort Collins/Wellington area to Denver. The Statement identified areas of I-25 and associated structures such as bridges that needed to be expanded and/or improved.

F. CDOT has proposed to expand I-25 from two lanes (north and south) to three lanes (north and south) for approximately fourteen miles between State Highway 14 and State Highway 402, replace the Cache la Poudre Bridge and the Union Pacific Railroad Bridge north of State Highway 34, expand the Kendall Parkway Crossing under I-25 and expand the Bridge over the Big Thompson River and the Bridge over the Great Western Railway to accommodate a third travel lane (collectively “Project”).

G. Funding for the Project is proposed to include contributions from government at federal, state, county, and municipal levels and other sources.

H. Increased property values for Larimer County property owners in 2015 have provided an opportunity to increase the County Road and Bridge Mill Levy within the County’s total Mill Levy commencing in 2016 and for a period of four years thereafter by an estimated

amount sufficient to generate an additional \$2 million annually without detriment to other County programs, without decreasing the amount shared back to the Municipalities in 2015 pursuant to C.R.S. §43-2-202(2) (the “2015 Share Back”), and without increasing the total County Mill Levy.

I. The increased County Road and Bridge Mill Levy is projected to generate approximately \$10 million in excess of the 2015 Share Back (the “Increased Municipal Share Back”) over five years commencing with calendar year 2016 for CDOT’s use on the Project.

J. The Municipalities have each adopted Resolutions expressing their willingness to contribute funds to County annually for five years for CDOT’s use on the Project subject to the terms of this Agreement.

K. County and Municipalities are authorized pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

II. CONSIDERATION

NOW, THEREFORE, in consideration of the covenants and obligations herein expressed, the County and Municipalities agree as follows.

III. TERMS AND CONDITIONS

1. Commencing in calendar year 2017 and continuing for calendar years 2018, 2019, 2020 and 2021, each Municipality shall pay to County from such Municipality’s general fund or such other fund as such Municipality may designate, an annual contribution in an amount equal to that portion of the Increased Municipal Share Back paid by the County to each Municipality pursuant to C.R.S. §43-2-202 (2) (“Municipality Contribution”) to be used as a portion of the “local match” for the Project, subject to the terms set forth in this Agreement.

2. County shall notify (“Notification”) each Municipality in writing no later than January 31 in calendar years 2017, 2018, 2019, 2020, and 2021 the total amount of the Increased Municipal Share Back” received by such Municipality during the previous calendar year.

3. Within 30 days after receipt of the Notification, each Municipality shall give written notice to the County stating whether or not such Municipality has budgeted and appropriated funds for the current calendar year to make its annual Municipality Contribution as set forth in Paragraph 1 above.

4. Provided the Municipality has budgeted and appropriated funds, such Municipality shall pay its Municipality Contribution to County within 60 days following such Municipality’s receipt from County of its Notification.

5. County shall contribute an amount equal to the County's share of the County Road and Bridge Mill Levy revenues received pursuant to C.R.S. §43-2-202(2) attributable to the increase in the County Road and Bridge Mill Levy specified in Recital H above ("County Contribution). No later than February 28 in calendar years 2017, 2018, 2019, 2020 and 2021, County shall give written notice to each Municipality affirming that County has (or has not) budgeted and appropriated funds for the current calendar year to make its annual County Contribution.

6. County shall deposit the County Contribution and the Municipality Contributions into a separately identifiable account ("Contributions Fund") and shall maintain records as to such account sufficient to identify all deposits and withdrawals from such account.

7. County is authorized to pay to CDOT funds in the Contributions Fund for CDOT's use in the Project pursuant to an intergovernmental agreement to be executed between County and CDOT.

8. County shall maintain accurate accounts of any and all amounts paid to CDOT from the Contributions Fund. County shall provide to Municipalities information detailing Project payments to CDOT from the Contributions Fund.

9. If County or a majority of Municipalities, after consultation with the other Parties, determines all or any part of the Project is not feasible due to inadequacy of funds or other impediments, and provided amounts remain in the Contributions Fund, County shall so notify Municipalities in writing. Within 90 days after such notification,

a. County shall make a payment to County and to each Municipality of any amount remaining in the Contributions Fund attributable to County and such Municipality's respective percentage contribution ,

OR,

b. In lieu of such payment, the Parties may agree in writing to an alternative use of the Contribution Funds, provided such alternative use benefits roads or transportation systems located within the jurisdiction(s) of the Parties so agreeing.

10. Any notice or other communication given by any party to another relating to this Agreement must be hand-delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other party at its respective addresses set forth in Exhibit "A" attached hereto and such notice or other communication will be deemed given when so hand-delivered or three (3) business days after so mailed, or the next business day after being deposited with an overnight commercial courier.

11. The obligations of the County and Municipalities to commit or expend funds after calendar year 2016 are subject to and conditioned on the annual appropriation of funds sufficient and intended to carry out said obligations by the respective governing bodies of County and Municipalities in their sole discretion.

12. This Agreement is to be construed according to its fair meaning and as if prepared by all parties hereto and is deemed to be and contain the entire understanding and agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Agreement unless set forth in writing and signed by the Parties hereto.

13. This Agreement cannot be modified except in writing signed by all Parties.

14. This Agreement will be governed by and its terms construed under the laws of the State of Colorado. Venue for any action shall be in Larimer County, State of Colorado.

15. Nothing contained herein is deemed or should be construed by the Parties or by any third party as creating the relationship of principle and agent, a partnership or a joint venture between the Parties, or an employment relationship between the Parties.

16. This Agreement is made for the sole and exclusive benefit of County and Municipalities, their successors and assigns, and it is not made for the benefit of any third party.

17. If any term or condition of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such a term or condition, will not in any way affect any of the other terms or conditions of this Agreement, provided that the invalidity of any such term or condition does not materially prejudice any Party in their respective rights and obligations under the valid terms and conditions of this Agreement.

18. No party will be deemed in violation of this Agreement if prevented from performing any of its respective obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, riots, rebellions, sabotage, or any other circumstances for which it is not responsible or that are not within its control.

19. This Agreement may be signed by the Parties in counterpart.

BOARD OF COUNTY COMMISSIONERS OF
LARIMER COUNTY, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

County Attorney

Jshdocs/county/Agreement for funding I-25 improvements Final

CITY OF FORT COLLINS, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

City Attorney

CITY OF LOVELAND, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

City Attorney

TOWN OF ESTES PARK

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF TIMNATH, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF BERTHOUD, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF WINDSOR, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF WELLINGTON, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

TOWN OF JOHNSTOWN, COLORADO

By: _____

Title: _____

ATTEST:

Approved as to form:

Town Attorney

EXHIBIT "A"

To County:

County Manager
Larimer County, Colorado
P.O. Box 1190
Fort Collins, CO 80522

To Fort Collins:

City Manager
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

With copy to:

City Attorney
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

To Loveland:

City Manager
City of Loveland
500 East 3rd Street, Suite 330
Loveland, CO 80537

With copy to:

City Attorney
City of Loveland
500 East 3rd Street, Suite 330
Loveland, CO 80537

To Estes Park:

Town Administrator
P.O. Box 1200
Estes Park, CO 80517

To Timnath:

Town Manager
4800 Goodman Street
Timnath, CO 80547

To Berthoud:

Town Administrator
P.O. Box 1229
Berthoud, CO 80513

To Windsor:

Town Manager
301 Walnut Street
Windsor, CO 80550

To Wellington:

The Town of Wellington
3735 Cleveland Avenue
P.O. Box 127
Wellington, CO 80549

With copy to:

March, Olive and Pharris, LLC
Attn: Brad March
1312 S. College Ave.
Fort Collins, CO 80524

To Johnstown:

Town Manager
450 S. Parish Ave.
Johnstown, CO 80534