

RESOLUTION 2017-063
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT AMENDMENT
TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY
AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE
NORTH COLLEGE IMPROVEMENTS PROJECT- CANAL TO STATE HIGHWAY 1

WHEREAS, in 2012 the City was awarded federal Congestion Mitigation and Air Quality (“CMAQ”) funds by the North Front Range Metropolitan Planning Organization (“NFRMPO”) to initiate a project addressing the lack of pedestrian facilities along US Highway 287 between the City limits and State Highway, also known as the North College Improvements Project – Canal to State Highway 1, both within the City and unincorporated Larimer County (the “Project”); and

WHEREAS, Resolution 2015-007 and Ordinance No. 009, 2015 approved the execution of an Intergovernmental Agreement between the City and the Colorado Department of Transportation (“CDOT”) and appropriation of \$908,323 in federal and local matching funds for the Project; and

WHEREAS, it was later determined that \$908,323 was not adequate funding for the Project; and

WHEREAS, Larimer County (the “County”) subsequently applied for, and was awarded, a federal Transportation Alternatives Program (“TAP”) grant in the amount of \$648,000 for pedestrian improvements in the area within the Project, with the County providing local matching funds of \$162,000, for a total grant amount of \$810,000 (the “TAP Grant”); and

WHEREAS, the City, the County and CDOT all agree that the City is best positioned to incorporate the TAP Grant into the Project by entering into an Intergovernmental Agreement (the “IGA”) with the County where the County will transfer the \$162,000 local matching funds for the TAP Grant to the City and then the City will amend the existing Project IGA between the City and CDOT to incorporate the TAP Grant into the Project; and

WHEREAS, after incorporating the TAP Grant, the total amount currently appropriated for the Project is \$1,718,323; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes provides that governments may cooperate or contract with one another to provide certain services or facilities when such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, the City Council has determined that the Project is in the best interests of the City and that the Mayor be authorized to execute the IGA between the City and CDOT in support thereof.

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

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

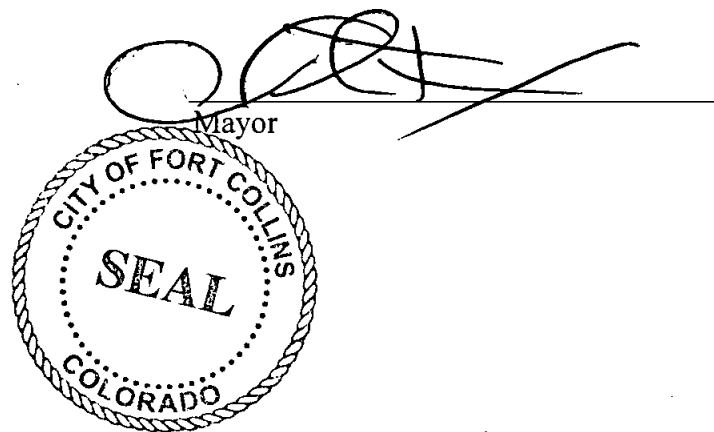
Section 2. The City Council hereby authorizes the Mayor to execute the Amendment to the Agreement between the City and CDOT, substantially in the form attached hereto as Exhibit "A," together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines necessary and appropriate to protect the interests of the City or further the purposes of this Resolution, as set forth above.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 5th day of September, A.D. 2017.

ATTEST:



Chief Deputy City Clerk



STATE OF COLORADO AMENDMENT

Amendment #: 1

Project #: AQC M455-111 (19561)

SIGNATURE AND COVER PAGE

State Agency Department of Transportation		Amendment Routing Number 15-HA4-ZH-00121-M0006																
Contractor City of Fort Collins		Original Agreement Routing Number 15-HA4-75629																
Agreement Maximum Amount	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Initial term</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">State Fiscal Year</td> <td style="padding: 2px; text-align: right;">\$0.00</td> </tr> <tr> <td style="padding: 2px;">Extension terms</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">State Fiscal Year</td> <td style="padding: 2px; text-align: right;">\$0.00</td> </tr> <tr> <td style="padding: 2px;">State Fiscal Year</td> <td style="padding: 2px; text-align: right;">\$0.00</td> </tr> <tr> <td style="padding: 2px;">State Fiscal Year</td> <td style="padding: 2px; text-align: right;">\$0.00</td> </tr> <tr> <td style="padding: 2px;">State Fiscal Year</td> <td style="padding: 2px; text-align: right;">\$0.00</td> </tr> <tr> <td style="padding: 2px;">Total for all state fiscal years</td> <td style="padding: 2px; text-align: right;">\$1,718,323.00</td> </tr> </table>	Initial term		State Fiscal Year	\$0.00	Extension terms		State Fiscal Year	\$0.00	State Fiscal Year	\$0.00	State Fiscal Year	\$0.00	State Fiscal Year	\$0.00	Total for all state fiscal years	\$1,718,323.00	Agreement Performance Beginning Date The later of the effective date or February 13, 2015
Initial term																		
State Fiscal Year		\$0.00																
Extension terms																		
State Fiscal Year		\$0.00																
State Fiscal Year		\$0.00																
State Fiscal Year	\$0.00																	
State Fiscal Year	\$0.00																	
Total for all state fiscal years	\$1,718,323.00																	
		Initial Agreement expiration date February 12, 2020																

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

Each person signing this Amendment represents and warrants that he or she is duly authorized to execute this Amendment and to bind the Party authorizing his or her signature.

<p style="text-align: center;">CONTRACTOR City of Fort Collins</p> <hr style="width: 80%; margin: 10px auto;"/> <p style="text-align: center;">By: _____</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, Governor Department of Transportation Shailen P. Bhatt, Executive Director</p> <hr style="width: 80%; margin: 10px auto;"/> <p style="text-align: center;">Joshua Laipply, P.E., Chief Engineer</p> <p style="text-align: center;">Date: _____</p>
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In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Department of Transportation

Effective Date: _____

1) PARTIES

This Amendment (the "Amendment") to the Original Agreement shown on the Signature and Cover Page for this Amendment (the "Agreement") is entered into by and between the Contractor and the State.

2) TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Agreement shall be construed and interpreted in accordance with the Agreement.

3) EFFECTIVE DATE AND ENFORCEABILITY

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in **§3.B** of this Amendment

B. Amendment Term

The Parties' respective performances under this Amendment and the changes to the Agreement contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Agreement.

4) PURPOSE

The Parties entered into the Agreement for the design and construction of pedestrian improvements along US 287. The Parties now desire to increase the Total Budgeted Funds in Exhibit C by \$810,000.00 for a new Agreement total of \$1,718,323.00.

5) MODIFICATIONS

The Agreement and all prior amendments thereto, if any, are modified as follows: Exhibit C-3. Exhibit C to the Agreement, Exhibit C-1 to Option Letter No. 1 and Exhibit C-2 to Option Letter No. 2 are removed and replaced entirely with Exhibit C-3, hereto attached to this Amendment. All references to Exhibit C, C-1, and Exhibit C-2 will be replaced with Exhibit C-3. Exhibit C-3 increases the Total Budgeted Funds by \$810,000.00, for a new Agreement total of \$1,718,323.00.

6) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments or other modifications to the Agreement, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Agreement, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement or any prior modification to the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Agreement to the extent that this Amendment specifically modifies those Special Provisions.

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30. EXHIBIT C-3 – FUNDING PROVISIONS

AQC M455-111 (19561)

A. Cost of Work Estimate

The Local Agency has estimated the total cost of the Work which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds (80.00% of Participating Costs-TAP)				\$648,000.00
Federal Funds (82.79% of Participating Costs-AQC)				\$752,000.00
b. Local Agency Matching Funds (20.00% of Participating Costs)				\$162,000.00
Local Agency Matching Funds (17.21% of Participating Costs)				\$156,323.00
TOTAL BUDGETED FUNDS				\$1,718,323.00
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)				\$1,400,000.00
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				\$1,400,000.00
FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$696,863.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$696,863.00
WBS Element 19561.10.30	Design	3020		\$696,863.00
WBS Element 19561.20.10	Const	3301		\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80.00% federal-aid funds (CFDA #20.205) to 20.00% Local Agency funds and 82.79% federal-aid funds to 17.21% Local Agency funds, it being understood that such ratio applies only to the \$1,718,323.00 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 \$1,718,323.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% (TAP) or 17.21% (AQC) 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 \$1,718,323.00, 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 \$1,400,000.00 (for CDOT accounting purposes, the federal funds of \$1,400,000.00 and the Local Agency matching funds of \$318,323.00 will be encumbered for a total encumbrance of \$1,718,323.00), unless such amount is decreased as described in Sections B. and C. 1. of this Exhibit C, 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.

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the federal participating funds and the local agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 7. A. of this contract.

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 2 CFR part 200, subpart F (Audit Requirements) 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 of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, 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 of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more 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.