

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COMMERCE
CITY AND THE CITY OF BRIGHTON REGARDING COST-SHARING FOR US85
AND 120TH AVENUE PROJECT (LED BY THE COLORADO DEPARTMENT OF
TRANSPORTATION)**

This **INTERGOVERNMENTAL AGREEMENT** (“Agreement”) is made and entered into effective the _____ day of _____, 2022, (the “Effective Date), by and between the **CITY OF COMMERCE CITY**, a Colorado home rule municipality located at 7887 East 60th Avenue, Commerce City, CO 80022 (“Commerce City”), and the **CITY OF BRIGHTON**, a Colorado home rule municipality located at 500 S. 4th Avenue, Brighton, CO 80601 (“Brighton”) (collectively referred to herein as the "Parties" or each individually as a "Party").

RECITALS

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution, as well as Section 29-1-201, *et seq.*, and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit;

WHEREAS, the Colorado Department of Transportation (“CDOT”) initiated a project to acquire parcels needed for the planned future grade separated interchange at US85 and 120th Avenue, in order to preserve the required right-of-way necessary for the future road construction improvements (known as “the Project”);

WHEREAS, Commerce City and CDOT previously executed an Intergovernmental Agreement dated September 8, 2021, attached as Exhibit A to this Agreement and incorporated herein by reference, to which Brighton is not a party, wherein Commerce City agreed to reimburse CDOT up to, but not more than, Two Million, Nine Hundred Thousand Dollars (\$2,900,000.00) towards the cost of the Project (the “Local Match”);

WHEREAS, in recognition of the regional benefits of the Project to the citizens of both Parties, Commerce City has requested, and Brighton agrees, that Brighton pay Commerce City Four Hundred Thousand Dollars (\$400,000.00) pursuant to the terms of this Agreement, which funds shall be used to reimburse Commerce City in part for the Local Match associated with the Project, specifically, for property acquisitions carried out by CDOT pursuant to Commerce City’s intergovernmental agreement with CDOT;

WHEREAS, the payment of Four Hundred Thousand Dollars (\$400,000.00) will represent a partial payment toward and deduction from the \$3,000,000.00 committed by the City of Brighton in Resolution No. 2017-120 for the US Department of Transportation Infrastructure for Rebuilding America grant program; and

WHEREAS, the Parties wish to enter into this Agreement to formalize and establish the terms of Brighton’s funding commitment towards the Local Match for the Project.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein, and for other good and valuable consideration, the sufficiency and receipt of which is hereby

acknowledged, the Parties do hereby agree as follows:

1. **Agreement.** Subject to the terms and conditions set forth in this Agreement, Brighton hereby agrees to contribute Four Hundred Thousand Dollars (\$400,000.00) to Commerce City, which funds shall be used by Commerce City to partially fulfill its funding obligations for the Project.
2. **Brighton's Contribution – Payment.** Within sixty (60) days of the Effective Date, Brighton shall make full payment of its \$400,000.00 contribution to Commerce City (the “Due Date”).
3. **Assignment.** Neither Brighton nor Commerce City may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other Party.
4. **Time is of the Essence.** The Parties acknowledge that time is of the essence in the performance of this Agreement.
5. **No Partnership or Agency.** Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither Commerce City nor Brighton shall be deemed or constitute a partner, joint venturer or agent of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other.
6. **No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person other than Commerce City and Brighton shall be deemed to be only an incidental beneficiary under this Agreement.
7. **Notices.** Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party hereto by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or, in lieu of such personal services, when received in the United States mail, first-class postage prepaid addressed to:

Brighton:

City of Brighton
500 S. 4th Avenue
Brighton, CO 80601
Attn: Public Works

Commerce City:

City of Commerce City
8602 Rosemary Street
Commerce City, CO 80022
Attn: Brent Soderlin, City Engineer

Either Party may change its address for the purpose of this Section by giving written notice of such change to the other Party in the manner provided in this Section.

8. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

9. Controlling Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement to be provided hereunder shall lie in Adams County, Colorado.

10. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

11. Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties.

12. Entire Contract. This Agreement constitutes the entire agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

13. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

14. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

15. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[remainder of page left blank – signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF BRIGHTON

Michael Martinez, City Manager

ATTEST:

APPROVED AS TO FORM:

Natalie Hoel, City Clerk

Yasmina Shaush, Assistant City Attorney

CITY OF COMMERCE CITY

Roger Tinklenberg, City Manager

ATTEST:

APPROVED AS TO FORM:

Dylan A. Gibson, City Clerk

Brian Swann, Assistant City Attorney

**EXHIBIT A – INTERGOVERNMENTAL AGREEMENT BETWEEN CDOT AND CITY
OF COMMERCE CITY (OLA #331002507) DATED SEPTEMBER 8, 2021**

(Local \$CDOTWRK)
PROJECT: NHPP 0704-251 (24398)

REGION: 1 (DZ)

CONTRACT

THIS CONTRACT, executed this ____ day of 9/8/2021, _____ by and between the State of Colorado, for the use and benefit of the Colorado Department of Transportation (“State” or “CDOT”) and CITY OF COMMERCE CITY, 8602 Rosemary Street, Commerce City, Colorado, 80022, CDOT Vendor #: 0002000396 (“Local Agency”), and the State and the Local Agency together shall be referred to as the “Parties.”

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number MTF OR 400, GL Acct. 4511000010
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. 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.
4. State funds may be awarded pursuant to Multimodal Transportation Options Funding (“MMOF”), as applicable. MMOF means money transferred from the general fund to the fund pursuant to C.R.S. §§24-75-219 (5)(a)(III) and (5)(b)(III) and any other money that the general assembly may appropriate or transfer to the fund. These funds are subject to an expiration date, if applicable.
5. The Local Agency has estimated the contribution and 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.
6. The Local Agency has funds available and desires to provide up to \$2,900,000.00 in funding for the Work. These funds may be MMOF.
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.
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 CDOT and the City of Commerce City are partnering to purchase properties, and the Local Agency shall provide their Contribution toward the Project, in City of Commerce City, Colorado, 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:

- A. This Contract
- B. **Exhibit A** (Scope of Work)
- C. Other Exhibits in descending order of their attachment.

Section 3. Term

This Contract shall be effective upon approval of the CDOT Chief Engineer or designee and shall terminate on June 15, 2031, or sooner if any of the State's funding expires, or is sooner terminated or unless performance is extended in accordance with this Contract.

Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the Contribution and is prepared to provide its funding, as evidenced by an 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 \$2,900,000.00.
- C. **The maximum amount payable by the Local Agency under this contract shall be \$2,900,000.00** 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.
- D. If the project is funded by MMOF, then the Local Agency must submit all documentation necessary to process the payments 30 days prior to end of State fiscal year. The State fiscal year ends June 30th. MMOF projects must submit final billing for all work 30 days prior to the end of the State fiscal year that funds expire. If MMOF are used, and the State knows that the funds will expire, the State shall promptly notify Local Agency of the expiration date. The State will promptly notify the Local Agency if that expiration date changes.

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 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

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 and FHWA. 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 and FHWA 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 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 1, 4670 Holly St., Denver, CO 80216. Said Region Director will also be responsible for coordinating the State's activities under this agreement and will also issue a "Notice to Proceed" to the Local Agency for commencement of 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 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:
Katie Dawson
CDOT Region 1
4670 Holly St.
Denver, Colorado 80216
303-398-6766
katie.dawson@state.co.us

If to the Local Agency:
Brent Soderlin
CITY OF COMMERCE CITY
8602 Rosemary Street
Commerce City, Colorado 80022
303-289-8175
bsoderlin@c3gov.com

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. Colorado Special Provisions (Colorado Fiscal Rule 3-3)

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

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor 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 Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor 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 Contractor harmless; requires the State to agree to binding arbitration; limits Contractor'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 Contractor'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. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor 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. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor 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 Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, 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] Contractor 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., Contractor 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 Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (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 Contractor 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 Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If

Contractor 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, Contractor shall be liable for damages.

L. Public Contracts with Natural Persons §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (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.

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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.

<p style="text-align: center;">THE LOCAL AGENCY CITY OF COMMERCE CITY</p> <p>DocuSigned by: <i>Benjamin Huseman</i> 884988EA6DB948B...</p> <p style="text-align: center;">Signature</p> <p>Name & Title: Benjamin A. Huseman, Mayor</p> <p>Date: <u>9/6/2021</u></p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, GOVERNOR Colorado Department of Transportation</p> <p>DocuSigned by: <i>Steve Harelson</i> AB4G0B01642B42E...</p> <p>By: _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director</p> <p>Date: <u>9/8/2021</u></p>
<p style="text-align: center;">Additional Local Agency Signatures</p> <p><i>APPROVED AS TO FORM:</i> DocuSigned by: <i>Brian Swann</i> D73D7C2E676445A...</p> <p style="text-align: center;">Signature</p> <p>Name & Title: Brian Swann, Assistant City Attorney</p> <p>Date: <u>9/2/2021</u></p> <p><i>ATTESTED BY:</i> DocuSigned by: <i>[Signature]</i> 798CD14FB5714B1...</p> <p style="text-align: center;">Signature</p> <p>Name & Title: Dylan A. Gibson, City Clerk</p> <p>Date: <u>9/8/2021</u></p>	

Exhibit A

Scope of Work

Project number: NHPP 0704-251
Subaccount number: 24398
Project location: US85 and 120th Avenue

IGA Scope of Work

The Colorado Department of Transportation (CDOT) will be acquiring parcels needed for the future grade separated interchange at US85 and 120th Avenue to preserve the required Right-Of-Way for construction. These parcels were identified during the environmental phase as total acquisitions.

The City of Commerce City was awarded sub-regional DRCOG funds for pre-construction activities at this location. CDOT and the City are partnering to purchase properties including, but may not be limited to: AP-375, AP-389, AP-412, AP-390, and AP-407, as depicted in the ROW plans for CDOT Project 21510.

The funding for available for these acquisitions, as identified in the 2020-2023 Transportation Improvement Plan is \$12,600,000.00:

Federal (STP-M):	\$8,700,000.00
State (RPP):	\$1,000,000.00
Local:	\$2,900,000.00

The City will reimburse CDOT up to, but not more than, \$2,900,000.00.

CDOT will hold all project reimbursement billings accrued in 2021 to Commerce City until January 15th 2022. Commerce City agrees to reimburse CDOT all costs from 2021 in January 2022 contingent upon Commerce City 2022 budget appropriations. Local Agencies obligations to make any payment under this agreement are contingent upon the appropriation of funds for such purpose through its lawful budgeting process.