

## RESOLUTION NO. 90-05

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) REGARDING 29 ROAD AND I-70 B INTERCHANGE APPROVAL PROCESS.

### RECITALS:

A key to the transformation of the 29 Road corridor into a major component of the transportation network linking the Riverside Parkway, 29 Road and ultimately I-70, is the proposed interchange at I-70 B. The interchange project proposes to construct a viaduct to extend 29 Road over the Union Pacific Railroad tracks and I-70B. These improvements are part of the 29 Road corridor improvements that will eventually connect Highway 50 with Interstate 70.

Prior to the approval of a new intersection or interchange on the State highway system, CDOT requires completion of a feasibility study and an environmental assessment. Those studies serve as tools in deciding whether or not an intersection or interchange will be allowed. The studies are completed in accordance with CDOT policy directive 1601.

As part of the 1601 process, an initial Intergovernmental Agreement (IGA) is required between the applicant (City of Grand Junction) and CDOT addressing responsibility for administrative and application costs, analytical procedures and responsibilities, anticipated level of design detail, approval process, anticipated schedule and other necessary issues following a project scoping meeting between the applicant and CDOT.

The initial IGA anticipates that the City will reimburse CDOT up to \$20,000 for administrative costs incurred as part of the review and approval process.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO, that:

- a. The agreement attached hereto and which outlines the process whereby the City will reimburse CDOT for incurred expenses is authorized and approved.

- b. Approval of the agreement authorizes the expenditure(s) as provided by the agreement and for the purposes of the agreement.

PASSED AND ADOPTED this 18<sup>th</sup> day of May, 2005

CITY OF GRAND JUNCTION, COLORADO

/s/: Bruce Hill  
President of the Council

ATTEST:

/s/: Stephanie Tuin  
City Clerk

(Local \$CDOTWRK)  
C 0701-175 (15224)  
Grand Jct/Region 3/(NSO)

Rev 10/03  
05HA300061  
CMS ID 05-193

## **INTERGOVERNMENTAL AGREEMENT**

**THIS INTERGOVERNMENTAL AGREEMENT** made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the State of Colorado for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION hereinafter referred to as the State and the CITY OF GRAND JUNCTION, COLORADO, 250 North 5<sup>th</sup> Street, Grand Junction, Colorado 81501, FEIN: 846000592, hereinafter referred to as the City or the "Local Agency."

### **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 400, Appropriation Code 010, Organization Number 9991, Program 2000, Function 3020, Object 2312 1N Phase D, Reporting Category 3410, Intergovernmental Agreement Encumbrance Number 15224, (Intergovernmental Agreement Encumbrance Amount: \$0.00).
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may Intergovernmental Agreement with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. The City anticipates a project for a new interchange at I 70B and 29 Road and by the date of execution of this Agreement , the Local Agency and/or the State will have completed and agreed upon a Scope of Work (Exhibit A) describing the general nature of the Work.
5. The City will be preparing conceptual designs, studies, and other documents in anticipation of a new interchange project at I 70B and 29 Road. The interchange project will be subject to the procedures outlined in CDOT's procedural directive 1601, which is attached hereto by this reference.
6. The City has made funds available for project C 0701-175 (15224), which shall consist of review services by CDOT of the conceptual designs, studies and other documents, which will be prepared by the City to evaluate a new interchange in accordance to procedural directive 1601, referred to as the "Project" or the "Work." Such Work will be performed in Grand Junction, Colorado, specifically described in Exhibit A.
7. The City has funds available and desires to provide 100% of the funding for the work.

8. The City has estimated the total cost of the work and is prepared to provide the funding required for the work, as evidenced by resolution duly passed and adopted by the authorized representatives of the City, which expressly authorizes it to enter into this Agreement and to expend its funds for the work under the project. A copy of such resolution is attached hereto and incorporated herein as Exhibit B.

9. This Agreement 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.

10. 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 Project or the Work under this Agreement shall consist of review services by CDOT of the conceptual designs, studies and other documents, which will be prepared by the City to evaluate a new interchange project at I 70B and 29 Road, in Grand Junction, Colorado, as more specifically described in Exhibit A.

### **Section 2. Order of Precedence**

In the event of conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. This Agreement
2. Exhibit A (Scope of Work)
3. Exhibit C (Agreement Modification Tools)
4. Other Exhibits in order of their attachment.

### **Section 3. Term**

This Agreement shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this Agreement shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

### **Section 4. Project Funding Provisions**

A. The City has estimated the total cost of the work and is prepared to provide the funding required for the work, as evidenced by a resolution duly passed and adopted by the authorized representatives of the City, which expressly authorizes it to enter into this Agreement and to expend its funds for the work under the project. A copy of such resolution is attached hereto and incorporated herein as Exhibit B.

B. The parties have estimated the total cost the work to be \$20,000.00, which is to be funded as follows:

a.	City of Grand Junction Funds	\$20,000.00
	Total Funds:	\$20,000.00

C. The maximum amount payable by the City under this Agreement shall be \$20,000.00, unless such amount is increased by an appropriate written modification of 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 revision(s) (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. The parties hereto agree that this Agreement 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 Agreement may be terminated by any of the parties, 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 City will reimburse the State for its share of incurred costs relative to the project following its review and approval of such charges, subject to the terms and conditions of this Agreement.

B. If the City 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 City will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the City fail to pay money due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the City agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the City 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 City fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the City 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 City, 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 there is a legitimate disagreement or dispute over or above the bill, City shall notify the State in writing, which action shall suspend the application of B1 and B2 above.

### **Section 6. State and Local Agency Commitments**

A. The City shall be responsible for preparing the conceptual designs, studies and other documents required in accordance with the provisions of the CDOT 1601 procedural directive for the proposed new interchange.

B. CDOT shall provide review services for the conceptual designs, studies and other documents as prepared by the city for compliance with the 1601 procedural directive and other applicable state and federal requirements.

### **Section 7. Environmental Obligations**

The City shall prepare its conceptual designs, studies and other documents 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 8. Record Keeping**

The parties shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this Agreement. The parties shall maintain such records for a period of six (6) 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. Each party shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the state, the City and/or the County to inspect the project and to inspect, review and audit the project records.

### **Section 9. 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 Intergovernmental 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. The Local Agency shall be obligated to return any payments advanced under the provisions of this Agreement.

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 10. Legal Authority**

Each party 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 each party to its terms. The person(s) executing this Agreement on behalf of the town or the county warrants that such person(s) has full authorization to execute this Agreement.

#### **Section 11. Representatives and Notice**

The State will provide liaison with the City through the State's Region Director, Region 3, 222 South 6<sup>th</sup> Street, Grand Junction CO 81501, (970) 248-7225. 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 City 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 3 and the City. 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 State:

Ed Fink  
Region Director  
CDOT Region 3  
222 South 6<sup>th</sup> Street,  
Grand Junction CO 8159  
(970) 248-7225

If to the City:

Jim Shanks  
Project Manager  
City of Grand Junction  
2529 High County Court  
Grand Junction CO 81501  
(970) 244-1543

### **Section 12. 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 13. 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 City. 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 City that any such person or entity, other than the State or the City receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

### **Section 14. 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 15. 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 16. 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 17. 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 18. 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 19. Modification and Amendment**

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 City.

## **Section 20. Funding Letters**

The State may allocate more or less funds available on this Agreement using a Funding Letter substantially equivalent to Exhibit C and bearing the approval of the State Controller or his designee. The funding letter shall not be deemed valid until it shall have been approved by the State Controller or his designee.

## **Section 21. 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 City 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 City 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 City 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.

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

**INTERGOVERNMENTAL AGREEMENTOR: STATE OF COLORADO:  
BILL OWENS, GOVERNOR**

**CITY OF GRAND JUNCTION,  
COLORADO**

By \_\_\_\_\_

Legal Name of Intergovernmental  
Agreementing Entity

For Executive Director

Department of Transportation

**846000592**

Social Security Number or FEIN

\_\_\_\_\_  
Signature of Authorized Officer

\_\_\_\_\_  
Print Name & Title of Authorized Officer

**CORPORATIONS:**

(A corporate seal or attestation is required.)

**Attest (Seal) By /s/ Stephanie Tuin  
(City Clerk)**

## SCOPE OF WORK

The City of Grand Junction anticipates a project for a new interchange at I-70B and 29 Road in the City of Grand Junction. The City shall prepare and submit a proposal including conceptual designs, studies and other documents to CDOT for review and evaluation of the new interchange in accordance with CDOT's Policy Directive 1601 dated December 15, 2004. The City of Grand Junction will be responsible for all costs for the development, administration and evaluation of the proposal.

\_\_\_\_\_ City of Grand Junction initial  
\_\_\_\_\_ State of Colorado initial

**COLORADO DEPARTMENT OF TRANSPORTATION  
INTERGOVERNMENTAL AGREEMENT FUNDING  
INCREASE/DECREASE AND APPROVAL LETTER**

Region: Complete section 1 and submit to CDOT Controller's office.

**AUTHORITY:**

State Controller Policy letter on June 12, 1996  
CDOT Controller letter on May 23, 1996

(1) This form to be used for the following Intergovernmental Agreements/situations only (check the appropriate situation):

indefinite quantity, order more/add more       utility/railroad, underestimated total cost  
 CDOT construction, sum of CMO's       LA construction, underestimated cost  
 CDOT construction, underestimated total cost       CDOT consultant, underestimated cost

**SECTION 1 (Region use)**

Date: (2)		Project code (3)	
To: CDOT Controller (FAX #(303) 757-9573 or e-mail CONTROLLER)		Project # (4)	
From: Region # (5)	Office: (5)	Phone # (5)	FAX # (5)

CDOT has executed a Intergovernmental Agreement with: (6)

Address: (6)

FEIN # (6)	Intergovernmental Agreement routing # (7)	COFRS encumbrance # (indicate PO, SC or PG #) (8)
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Fund (9)	Orgn. (9)	Appro. (9)	Prgr m. (9)	Fun c. (9)	Object/Sub-obj N/P (9)	GBL (9)	Reporting Catg. (9)	Proj/Sub/Phase (9)
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Original amount \$ (10)	Has a Budget Request been processed to cover the Intergovernmental Agreement amount increase? __yes__no (14)
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Previous Funding Letter(s) total \$ (11) (Funding letter #1 thru #__)	Preparer's name (15)  PHONE NO:
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This Funding Letter total \$ (12) (#__)	Intergovernmental Agreement Administrator's/Business Manager's Approval (16)  PHONE NO:
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Adjusted amount \$ (13)		CDOT Designee Approval (17)	
		Local Agency approval (18)	
<b>SECTION 2 (Controller's Office use) (19)</b>			
Total allotment amount \$ (19)		Commission budget \$ (19)	
If construction: _CE pool elig. (19)	CE charges \$ (19)	Indirect chgs \$ (19)	Adjusted Intergovernmental Agreement amount plus total CE & indirect charges calculation \$ (19)
I have reviewed the financial status of the project, organization, grant and have determined that sufficient funds are available to cover this increase, effective as of _____ (19)			
State Controller or Delegee (20)			Date (20)