

SPECIAL STUDY SESSION AGENDA

CITY COUNCIL
CITY OF WHEAT RIDGE, COLORADO

7500 W. 29th Ave.
Wheat Ridge CO

January 8, 2018

Upon adjournment from Regular Council Meeting

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Sara Spaulding, Public Information Officer 303-235-2877 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

Citizen Comment on Agenda Item

1. Clear Creek Crossing I-70 Hook Ramp Construction

ADJOURNMENT



Memorandum

TO: Mayor and City Council

THROUGH: Patrick Goff, City Manager

FROM: Scott Brink, Public Works Director

DATE: December 29, 2017 (for January 8, 2017 Study Session)

SUBJECT: Clear Creek Crossing I-70 Hook Ramp Construction

ISSUE:

Over the past few months, significant progress has been made with regard to commencing construction of access improvements to the Clear Creek Crossing site, more specifically the I-70 “hook ramps.” These improvements will provide direct access into and out of the Clear Creek Crossing site, as well as revise and improve the access between I-70 and 32nd Avenue. Following is a general description and update of the project process, including two IGA documents, one between the City and CDOT, and the other between the City and the Longs Peak Metro District. Consideration of approval of these documents by Council has been tentatively scheduled for January 22.

BACKGROUND:

Development of the property located west of I-70, south of Highway 58, and north of 32nd Avenue has been contemplated for several years. This effort started over a decade ago when Cabelas owned the property and a regional destination development was proposed for the site. This development eventually did not come to fruition and the property has remained vacant for the past several years. More recently, the property has turned over to new owners (Evergreen Development Co.). A mixed-use development is now being proposed over the same area with the exception of the property between Clear Creek and Highway 58, where no development is proposed at this time.

The I-70 access authorization process is essentially the same as previously conducted and approved by CDOT and the Federal Highway Administration (FHWA) when Cabelas owned the property. An updated Environmental Assessment (EA) and Interstate Access Request (IAR) in accordance with CDOT requirements have been developed and are nearing completion. These efforts have incorporated revised background and estimated future traffic levels for both the development, I-70, and connecting roadways. In addition to completing an updated traffic analysis (the majority of the effort), the EA also evaluates other environmental related items such as noise, wetlands, drainage, etc. CDOT staff is nearing final review and approval.

ISSUE AND NEXT STEPS:

Interstate Access Request (IAR)

The IAR is a formal approval process by CDOT and FHWA that allows for access modifications to I-70 (the hook ramps). The required administrative work has been completed by the City's consultant in accordance with the guidance provided by CDOT and FHWA staff. The next step is formal approval by the State Transportation Commission, scheduled as follows: Presentation at the Commission's monthly workshop on January 17, 2018, with consideration of formal approval at the Commission's regular meeting on either the following day (January 18), or the next regular meeting on February 15, 2018.

Intergovernmental Agreement (IGA) – City of Wheat Ridge and Longs Peak Metro District
Construction of the hook-ramps will be performed by Evergreen Development, through their construction manager, Mortenson Construction. This process will be performed under the provisions of an IGA between the City and the Longs Peak Metro District.

The City and Longs Peak Metro District have finalized a draft IGA. The construction will be coordinated and managed by Evergreen on behalf of the Metro District. Mortenson Construction (Evergreen's Construction Manager) will be conducting the overall construction management, bidding, contract awards, overall contract management, payments to contractors, inspection, and other necessary construction management logistics. The IGA between the City and Longs Peak will provide the necessary provisions, requirements and safeguards needed to assure that the project will be completed in accordance with both City and CDOT requirements. Longs Peak will be fronting the construction costs and construction progress payments. Among other construction related logistics, the IGA also provides provisions for reimbursements to Longs Peak from the City (2E funds) as construction progresses. Oversight of the construction by the City will be provided by the City's technical consultant (AECOM) under the direction of City staff.

Intergovernmental Agreement (IGA) – City of Wheat Ridge and CDOT

CDOT and the City are nearing completion of a draft IGA between the two agencies. This IGA essentially provides assurance to CDOT that the hook-ramps and associated infrastructure improvements will be constructed in accordance with the approved construction plans and CDOT requirements. The IGA draft language is generally consistent with similar IGA's and projects that cities have constructed involving CDOT facilities. The IGA includes provisions assuring construction quality assurance in accordance with CDOT requirements, final acceptance of construction, and long-term maintenance responsibilities. City staff will serve as a direct point of contact with CDOT during the project, with logistical support from the City's consultant (AECOM). AECOM has considerable experience with the construction of interstate highway and CDOT projects, and will provide the administrative support and documentation needed to meet CDOT requirements as included in the IGA.

ATTACHMENTS:

1. City of Wheat Ridge and Longs Peak Metro District IGA (Draft)
2. City of Wheat Ridge and CDOT IGA (Draft)

ATTACHMENT 1

DRAFT

INTERGOVERNMENTAL AGREEMENT FOR CONSTRUCTION OF THE I-70/CLEAR CREEK CROSSING DRIVE HOOK-RAMP EXCHANGE

This INTERGOVERNMENTAL AGREEMENT FOR CONSTRUCTION OF THE I-70/CLEAR CREEK CROSSING DRIVE HOOK RAMP EXCHANGE (“**Agreement**”) is entered into effective the ____ day of _____, 2018, by and between the City of Wheat Ridge, a Colorado home-rule municipality, and the Longs Peak Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”).

RECITALS

WHEREAS, the City of Wheat Ridge, Colorado (the “**City**”), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, the City has authority under Article XIV Section 18 of the Colorado Constitution and CRS 29-1-201 *et seq.* to enter into intergovernmental agreements for lawful purposes authorized to it; and

WHEREAS, the City of Wheat Ridge 2016 Ballot Issue 2E approved an increase to the City’s debt, including an amount not to exceed Ten Million Dollars (\$10,000,000) (the “**2E Funds**”) to finance the design and construction of on and off hook ramps from Interstate I-70 (the “**Hook Ramp Improvements**”); and

WHEREAS, the City has entered into an intergovernmental agreement with the Colorado Department of Transportation (“**CDOT**”) concerning the design, construction, and operation and maintenance of the Hook Ramp Improvements (the “**CDOT IGA**”), attached hereto as **Exhibit A**; and

WHEREAS, the District is causing the construction of various public improvements necessary to serve a mixed-use development project known as Clear Creek Crossing (the “**CCC Project**”) in coordination with the CCC Project’s developer, Evergreen-Clear Creek Crossing, LLC (“**Evergreen**”); and

WHEREAS, the Hook Ramp Improvements will serve motor vehicle traffic to and from I-70 and the CCC Project; and

WHEREAS, the District has entered into a Pre-Construction and Construction Management Services Agreement with M.A. Mortenson Company (the “**Construction Manager**” or “**CM**”), whereby the CM will provide pre-construction and construction management services for the CCC Project (the “**CM Agreement**”); and

WHEREAS, the District has entered into an Agreement for Development Director Services with Evergreen (hereinafter referred to as the “**Development Director**” or “**DD**”), whereby the DD will direct coordination and administration of the pre-construction and construction phases of the CCC Project in conjunction with the CM (the “**DD Agreement**”); and

WHEREAS, the District has entered into an Agreement for Engineering Services with Martin/Martin, Inc. (the “**Engineer**”) whereby the Engineer will provide pre-construction and construction engineering services for the CCC Project (the “**Engineer Agreement**”); and

WHEREAS, the District finds that the Hook Ramp Improvements are necessary public improvements to serve the CCC Project; and

WHEREAS, the City desires to use the 2E Funds to finance construction of the Hook Ramp Improvements in coordination with the CCC Project; and

WHEREAS, the District desires to incorporate the Hook Ramp Improvements’ construction into the CCC Project; and

WHEREAS, the District will cause construction of the Hook Ramp Improvements in accordance with the CDOT IGA through and in coordination with the CM, DD, and Engineer and their respective agreements:

NOW THEREFORE, in consideration of the mutual covenants and stipulations hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties do hereto agree as follows:

COVENANTS AND AGREEMENTS

1. **SCOPE OF SERVICES.** The District shall be responsible for the performance of all construction management services in connection with the construction of the Hook Ramp Improvements, at the direction of the City or its authorized representative, which services include, without limitation, the integration of the Hook Ramp Improvements into the CCC Project and managing the construction of the Hook Ramp Improvements in accordance with the requirements of the CDOT IGA (**Exhibit A**), more specifically described in the scope of services attached hereto and incorporated herein as **Exhibit B** (the “**Services**”). The Scope of Services as described in **Exhibit B** shall include all requirements of CDOT as provided in **Exhibit A** related to the construction, including but not limited to, the acquisition of all required permits, traffic control and safety and public information requirements, construction easements, utility coordination, progress reports, testing, and final reports and documentation, including record drawings.

2. **STANDARD OF PERFORMANCE.** The District shall perform such Services using that degree of skill and knowledge customarily employed by professionals performing similar services in the Denver metropolitan area. The City has provided the District with copies of reports, correspondence, estimates, plans or other documentation necessary to properly perform the Services. The City represents that the items listed in **Exhibit E** are all the documents and other information necessary to complete the Hook Ramp Improvements as required by the CDOT IGA (“**Document List**”). The District acknowledges that coordination with the City of certain Services is required under this Agreement (the “**Coordinated Services**”). Such Coordinated Services are

identified in **Exhibit B**, subsection E. The District agrees to coordinate its provision of the Coordinated Services as a subset of the Services, in full cooperation with the City.

3. **TERM OF AGREEMENT.** The term of this Agreement shall begin on the date of execution set forth above and shall expire when the Services have been completely performed to the City's satisfaction, or otherwise by mutual written agreement of the parties or by the exercise of the termination provisions specified in paragraph 12 herein.

4. **ADDITIONAL SERVICES.** The City may, in writing, request the District to provide the City with certain services not required in **Exhibit B** (the "Additional Services"). Additional Services shall not be performed by the District unless the District receives a written request for the performance of Additional Services from the City. Upon receipt of the written request, the City and the District shall negotiate the scope of the relevant Additional Services, which shall be subject to the mutual written agreement of the City and the District.

5. **TIME OF THE ESSENCE; SCHEDULE.**

A. The Services of the District shall be undertaken and completed in such a manner and in such a sequence as to assure their expeditious completion in light of the purposes of this Agreement. It is agreed that time is of the essence in the performance of this Agreement. Required performance deadlines for components of the Services are set forth in **Exhibit B**, subsection F.

B. **Time of Commencement and Completion.** The work of performing the Services is expected to commence on or before March 31, 2018. The District shall carry out construction of the Hook Ramp Improvements with all due diligence. Subject to allowances agreed to by the City for bad weather working days, substantial completion of the Hook Ramp Improvements shall be achieved no later than 365 calendar days after the date on which the District commences work, but in no event shall such substantial completion occur later than May 2, 2020. The City shall determine whether the work has been substantially completed, using such factors as are deemed appropriate by the City, including but not limited to the definition of "substantial completion" provided in §24-91-102(5), Colorado Revised Statutes.

6. **COMPENSATION.**

A. **Cost of Services.** The City shall reimburse the District for costs incurred to provide the Services (the "**Construction Costs**"), as set forth in detail in **Exhibit C**. In no event shall the City's obligation to pay for costs to provide the Services exceed ten million dollars (\$10M). Notwithstanding this limitation on the City's Cost Obligation, the District is obligated to complete all of the Services, it being the intention of the Parties that the District be responsible for all costs of such Services in excess of \$10M. The parties agree that the following expenditures previously made by the City shall be deducted from the City's \$10M maximum obligation: 1) Denver Water conduit work located within the hook-ramp construction limits in the estimated amount of \$557,335.63 (or actual cost); 2) Reimbursement Request #1 for Engineering and Design Services from Evergreen Development in the amount of \$176,305; 3) Reimbursement Request #2 for Engineering and Design Services from Evergreen Development in the estimated amount of \$146,000 (or actual cost); and 4) Any other reimbursement requests for future services

as required to support the final design and construction of the Hook Ramp Improvements. In no event shall the City be obligated to reimburse any cost of the Services for which reimbursement is requested later than three (3) years from the effective date hereof.

B. Cost of Additional Services. The City shall reimburse the District for costs incurred to provide any Additional Services negotiated by the parties and included in the written agreement contemplated by paragraph 3.

C. Applications for Payment. Each month, the District shall submit to the City monthly applications for payment of the Construction Costs and the cost to the District of providing any Additional Services incurred during the month (“**Application(s) for Payment**”). The Applications for Payment shall include the following documentation demonstrating the District’s incurrence of the Construction Costs and the cost of any Additional Services:

- i. an itemized invoice of costs incurred by the District, including the “applications for payment” for “services”, “work”, materials, supplies, and equipment performed or procured, pursuant to the CM Agreement for purposes of constructing the Hook Ramp Improvements; and
- ii. an itemized invoice of costs incurred by the District pursuant to the DD Agreement for purposes of constructing the Hook Ramp Improvements; and
- iii. an itemized invoice of costs incurred by the District pursuant to the Engineer Agreement for purposes of constructing the Hook Ramp Improvements; and
- iv. itemized invoice(s) demonstrating other costs incurred by the District for purposes of performing the Services under this Agreement, including but not limited to costs of legal, accounting, testing, or any other consulting or construction services; and
- v. itemized invoice(s) demonstrating costs incurred by the District for purposes of performing any Additional Services pursuant to an agreement for Additional Services.

D. District Contracted Fees and Rates. The City acknowledges that it has reviewed the CM Agreement, DD Agreement, Engineer Agreement and existing agreements with District Consultants. The City approves the fees and rates provided in the above-referenced agreements as the fees and rates the District will be charged and incur in performing the Services, and if applicable, any Additional Services. The District will provide the City written notice of any changes made to any fees or rates provided in the above-referenced agreements if such fees or rates relate to the District’s performance of the Services.

E. Time for Payment. The City shall pay to the District the Construction Costs and the cost of Additional Services provided on Applications for Payment within 30 days of receiving the Applications for Payment.

F. Multi-year Fiscal Obligation. The City’s obligation to pay any sum of money under this Agreement is subject to its appropriation of sufficient funds therefore, except as provided in paragraph 13. Non-appropriation of funds shall be a cause for termination of this Agreement.

7. **STATUS OF DISTRICT AND RELATIONSHIP TO CITY.**

A. The District is an independent contractor and nothing contained herein shall be construed as constituting any relationship with the City other than that expressed herein, nor shall it be construed as creating any relationship whatsoever between the City and the District's employees. Neither the District nor any of its employees, nor the CM, DD, or Engineer are or shall be deemed employees of the City. The District is not, and shall not act as, the agent of the City. The District shall pay all amounts due its, consultants, the CM, DD, and Engineer in connection with the performance of the Services. Further, the District has sole authority and responsibility to contract with, terminate, and otherwise control whom it engages to perform the Services. The District has sole authority and responsibility for its agents, employees, sub-contractors and all others it hires to perform or assist in performing the Services.

B. The parties hereto understand that the District and the District's employees and subcontractors are not entitled to workers' compensation benefits under any workers' compensation insurance policy of the City, and that the District is responsible for any federal and state income tax and other applicable taxes and other amounts that may be due on any moneys pursuant to this Agreement.

8. **WARRANTIES AND REPRESENTATIONS.** The District represents, warrants and covenants that:

A. It has the required authority, ability, skills and capacity to, and shall, perform the Services in a manner consistent with this Agreement. Further, all employees and sub-contractors of the District employed in performing the Services shall have the skill, experience and licenses required to perform the Services assigned to them.

B. To the extent the District deems necessary, in accordance with prudent engineering and/or business practices, it has inspected the sites and all surrounding locations whereupon it may be called to perform its obligations under this Agreement, and is familiar with the requirements of the Services and accepts them for such performance.

C. It has knowledge of all of the legal requirements and business practices in the state of Colorado that must be followed in performing the Services, and the Services shall be performed in conformity with such requirements and practices.

D. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action and do not and will not require any further consent or approval of the board of directors of the District. All such consents and approvals are in full force and effect.

E. This Agreement constitutes the legal, valid and binding obligation of the District enforceable in accordance with its terms.

9. **INSURANCE, INDEMNIFICATION AND BONDS.**

A. Governmental Immunity. Neither the District nor the City waive(s) any of the immunities or limitation of liability, defenses, and protections provided by the Colorado Governmental Immunity Act, CRS 24-10-101*et seq.* or the common law.

B. Indemnification. Within the limitation of the Colorado Constitution and Statutes, the District shall defend, release, indemnify and save harmless the City, its officers, agents and employees from any and all claims or damages, including but not limited to death, personal injury, property loss or damage occurring as a result of the negligence of the District, its agents, employees or contractors. The Parties acknowledge that provisions of this paragraph are not intended to waive any of the rights and defenses afforded the City under the Colorado Governmental Immunity Act (Section 24-10-101, *et. seq.*, C.R.S.). In addition, the Parties acknowledge that all such liabilities, claims and demands made by third parties shall be subject to any notice requirements, defenses, immunities, and limitations of liability that the City and its officers, agents and employees may have under the Colorado Governmental Immunity Act and under any other law.

C. Insurance.

- i. The District shall not commence Services under this Agreement until it has obtained all insurance required by the contract documents and such insurance has been approved by the City. The District shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Agreement, the District must maintain the insurance coverage required in this section.
- ii. The District agrees to procure and maintain, at its own cost, the following policy or policies of insurance. The District shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the contract documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- iii. The District shall procure and maintain, and shall cause each subcontractor of the District to procure and maintain (or shall insure the activity of the District's subcontractors in the District's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained from the date of commencement of the Services. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.
- iv. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Services under this Agreement, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.

- v. Comprehensive General Liability insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.
- vi. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of the District's owned, hired and/or non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interests provision.
- vii. The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the City, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, or its employees, shall be excess and not contributory insurance to that provided by the District. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The District shall be solely responsible for any deductible losses under each of the policies required above.
- viii. Certificates of insurance shall be completed by the District's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall identify the Hook Ramp Improvements project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the City. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of the District to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the City may immediately terminate this Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by the District to the City upon demand, or the City may offset the cost of the premiums against any monies due to the District from the City.

E. Bonds. The District shall provide the City with adequate performance and payment bonds to cover its entire obligation to perform the Services, which bonds may be reduced, from time to time, as portions of the Services are completed.

10. **ASSIGNMENT.** The District shall not assign this Agreement or parts hereof or its duties hereunder without the express written consent of the City.

11. **SUB-CONTRACTORS.** The District is solely and fully responsible to the City for the performance of the Services under this Agreement. Every agreement of the District forentity related to the Services under this Agreement shall be terminable not-for-cause and may require the posting of adequate performance and payment bonds with the District as beneficiary. The District will comply with all insurance requirements in forms and amounts as set forth in **Exhibit D** and all warranties (express or implied) resulting from any such agreements shall inure to the benefit of the City and its successors and assigns. The District shall provide to the City, on its behalf, and on behalf of all contracted entities providing Services the statutory illegal alien certifications, in form approved by the City Attorney.

12. **COORDINATION.** The District acknowledges that in the event the Agreement requires coordination with the City, local governments, consultants, contractors, and utilities, the District agrees to coordinate its provision of the Services as appropriate and necessary.

13. **TERMINATION; REMEDIES.** This Agreement may be terminated by either party in the event of a material breach by the other party. No such termination shall be effective unless and until the dispute resolution procedure in paragraph 17 has been fully complied with. In addition to any other rights provided herein, either party may terminate this Agreement not-for-cause, in whole or in part, by delivering written notice of such termination to the terminated party specifying the extent of termination and the effective date. Subject to the \$10M cost limitation, non-appropriation by the City of funds necessary to finance the Services in any fiscal year shall be cause for termination. If this Agreement is terminated, the City shall pay the District for all Construction Costs incurred and Additional Services satisfactorily performed prior to the designated termination date for so much of the Services as have been performed by that date. Neither party shall be entitled to claim or receive any form of damages, whether consequential, punitive or compensatory; the only remedy permitted hereunder for termination of the Agreement being the right to receive payment for so much of the Services as have been performed by the date of termination, and the only remedy for breach shall be specific performance of the Agreement provision breached.

14. **WORK PRODUCT.** All work product of the District prepared pursuant to this Agreement, including, but not limited to, all maps, plans, drawings, specifications, reports, electronic files, as-built drawings, and other documents, in whatever form, shall remain the property of the City under all circumstances, whether or not the Services are completed. When requested, all work product shall be delivered to the City in a format compatible to the City's computer applications. All work product shall be provided to the City at the time of completion of any of the discrete tasks specified in the Services or at the time of termination of this Agreement, whichever event first occurs.

15. **REAL PROPERTY CONVEYANCES.** The District shall convey the completed Hook Ramps along with the real property upon which they are situated by general warranty deeds to the City and to CDOT, as appropriate upon satisfactory completion of the Services. Prior to such conveyance, the District shall provide a current commitment for title insurance for the City's and

CDOT's review and approval. Such conveyance shall be free and clear of all liens and encumbrances other than as specifically permitted by the City and CDOT, as appropriate to the particular transfer. After title review and acceptance, the District shall provide an owner's policy of title insurance.

16. **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 service, upon receipt in the United States mail, first-class postage prepaid, addressed as follows:

to the City of Wheat Ridge:

Patrick Goff, City Manager
City of Wheat Ridge
7500 W. 29th Ave.,
Wheat Ridge, CO 80033

with a copy to Wheat Ridge City Attorney:

Gerald Dahl, City Attorney
Murray Dahl Kuechenmeister & Renaud, LLP
710 Kipling Street, Suite 300
Lakewood, CO 80215

to Longs Peak Metro District c/o:

Kim J. Seter, Esq.
Seter & Vander Wall, P.C.
7400 E. Orchard Rd., Suite 3300
Greenwood Village, CO 80111

with copy to Evergreen-Clear Creek Crossing, LLC c/o:

Christine McRight, Development Director
Tyler Carlson
Evergreen DevCo, Inc.
1873 S. Bellaire St., Suite 1200
Denver, CO 80222

Either party, the District or the City, may change its address for the purpose of this paragraph by giving written notice of such change to the other party in the manner provided in this paragraph.

17. **DISPUTE RESOLUTION.** The City and the District agree that all conflicts shall be discussed for immediate resolution between the individuals involved. Conflicts shall include unsettled claims, counterclaims, disputes and other matters in question arising out of or relating to this Agreement or the breach thereof. All conflicts shall be brought to the attention of the other party within a reasonable time period after the dispute has arisen. Should the individuals fail to resolve the conflict, then the conflict shall be raised to the next level of management within the

structure of each party. Should these efforts fail to resolve the conflict, the parties agree that each is entitled to terminate the Agreement or compel performance of the breached condition as permitted by paragraph 13.

18. **USE TAX.** Pursuant to Section 22-67 of the City's Code of Laws, building materials and supplies purchased for the Services are exempt from the City's use tax. The District shall make application for this exemption on behalf of its subcontractors and suppliers, on forms provided by and in compliance with the procedures of the City's Tax Division.

19. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties hereto relating to the Services and sets forth the rights, duties and obligations of each party to the other as of the date of this Agreement. Any prior agreements, promises, negotiations or representations regarding the Hook Ramp Improvements Services not expressly set forth in this Agreement are of no force and effect. This Agreement may not be amended except in writing executed by both the District and the City.

20. **BINDING AGREEMENT.** This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the parties hereto.

21. **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 therein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

22. **OBSERVE ALL LAWS.** The District shall keep fully informed and comply with all federal, state and local laws, ordinances and regulations and all orders and decrees of bodies or tribunals that may affect those engaged or employed in the performance of this Agreement.

23. **CONTROLLING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado, and any disputes hereunder shall be tried in the courts of the state of Colorado. Jurisdiction and venue shall be proper and exclusive in the district court for Jefferson County.

24. **INCONSISTENCIES WITH SCOPE OF SERVICES.** The intent and purposes of this Agreement and the construction documents is to complement each other; however, the terms and provisions of this Agreement shall prevail regarding differences in, discrepancies with, or conflicts of, terms or provisions contained in other contract documents.

25. **ADDITIONAL MATTERS.**

A. List any additional

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 WHEAT RIDGE

A home-rule municipality of the State of Colorado

By: _____

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

APPROVED AS TO FORM:

Gerald Dahl, City Attorney

LONGS PEAK METROPOLITAN DISTRICT

A quasi-municipal corporation and political subdivision of the
State of Colorado

By: _____

Michael Glade, President

ATTEST:

Tyler Carlson, Secretary

EXHIBIT A
CDOT IGA
[ATTACHED]

EXHIBIT B

SCOPE OF SERVICES

Capitalized terms shall have the meaning provided in the Agreement, and if not defined in the Agreement, the meaning provided in the CM Agreement. The District shall perform Services necessary to construct the Hook Ramp Improvements, including but not limited to the following:

A. Pre-Construction Services

1. Program Review and Evaluation. The District shall, in coordination with the CM and DD, review the Engineer's program and the contractual requirements to ascertain the requirements to construct the Hook Ramp Improvements, or any phase thereof. The District shall deliver to the City a copy of the Engineer's program, the District's evaluation of the program's sufficiency, the management and reporting procedures, schedule and budgeting of construction, and the value engineering and construction implications thereof, each in terms of the other.
2. Construction Schedule. The District shall provide the City with a construction schedule for the Hook Ramp Improvements, or any phase thereof. The construction schedule shall coordinate services required by the District, CM, DD, and Engineer, and any related City responsibilities with the anticipated schedule(s). The construction schedule shall also include a list of anticipated vendor purchase orders, trade contracts, recommend form of contract and summary of the Services and work to be performed under each.
3. Construction Cost Estimate and Budget. The District shall provide the City with a construction cost estimate for the Hook Ramp Improvements, or any phase thereof, including an itemized budget for work, materials, equipment and other costs based on requirements set forth in the Engineer's program for the same. The construction cost estimate shall include value engineering cost evaluations of alternative materials and systems.
4. Design Document Review. The District shall provide the City with the CM's written reports regarding the CM's design document review related to the Hook Ramp Improvements, or any phase thereof.
5. City Approval. Prior to commencement of any Bidding and Contracting Services for construction of the Hook Ramp Improvements, or any phase thereof, the City must approve the most current Engineer program, construction schedule, construction cost and budget, and the form of contract document(s) for the same.
6. Other Professional Services. The District shall select, retain and coordinate the professional services of surveyors, special consultants and testing laboratories required for the Hook Ramp Improvement, or any phase thereof, and shall otherwise coordinate surveys and other pre-mobilization activities.

7. Obtaining Permits. The District shall ensure that all permits and governmental approvals are obtained for the Hook Ramp Improvements, or any phase thereof.

8. CDOT Approvals. The City and District shall ensure that CDOT has provided its approval(s) of the Engineer program, design documents, construction schedule, or any other form approval, as required by the CDOT IGA.

B. Bidding and Contracting

1. Compliance. The District shall ensure compliance with all bidding and contracting requirements imposed on or required by the City, including all laws of the State of Colorado with respect to public projects, in performing the bidding and contracting Services under this Agreement.

2. Bidding Package Preparation and Approval. Upon the City's approval pursuant to Section A(e) above, and, the approval of any applicable governmental entity of the Construction Documents for the Hook Ramp Improvements, or any phase thereof, the District shall prepare and provide for the City's approval the Bidding Package(s) for the Hook Ramp Improvements, or applicable phase thereof.

3. Bidding Packages. Upon the City's approval of a Bidding Package, the District shall issue the Bidding Package for all construction related to the Hook Ramp Improvements. The District shall review and forward to the City for the City's review, all bids received for a Bidding Package, including a detailed bidding analysis prepared by the CM and the District's recommendation to the City of the lowest responsible bidder.

4. Award of Bid Trade Contracts/Purchase Orders. The City shall have a representative on the District's bid review/Trade Contract Committee. Upon the City's approval of the District's recommended lowest responsible and responsive bidder, the District shall accept the bid and award the respective trade contract(s) or purchase order(s). All awarded trade contracts and purchase orders shall be between the District and the respective trade contractor or vendor. The City shall not be a party to any trade contract, purchase order, or other agreement approved for a Bidding Package. Provided the City is up-to-date on Construction Costs and Additional Services reimbursement payments under this Agreement, the District shall indemnify the City of all claims, damages, losses and expenses arising from or related to any trade contract, vendor purchase order or other agreement related to construction of the Hook Ramp Improvements.

5. No Bid; Rejection of Bid. If the District receives no bid for a Bidding Package, the District shall re-advertise the Bidding Package. If only one bid is received or the lowest negotiated bid from a responsible bidder for a Bidding Package exceeds the construction budget for such Bidding Package work, materials, equipment or services, the District shall recommend to the City whether to re-advertise the Bidding Package or accept such bid. The City shall have sole discretion in determining whether the District may accept such bid or re-advertise the Bidding Package.

6. Insurance and Bonds. The City shall be named as a beneficiary on all required insurance and performance bonds related to construction of the Hook Ramp Improvements. The District shall obtain and forward copies of all insurance and bond documents to the City.

7. Assignment and Termination. The City may instruct the District to assign or terminate any trade contract or vendor purchase order related to construction of the Hook Ramp Improvements.

C. Construction

1. Coordination. The District shall ensure that construction of the Hook Ramp Improvements, or any phase thereof, is administered, managed and coordinated in the City's best interests, and in a manner consistent with the CDOT IGA, the latest approved construction cost, budget and schedule, and the Contract Documents for the same.

2. Meeting Records. The District shall keep for the City's review all records from any meetings held to discuss procedures, progress and scheduling related to construction of the Hook Ramp Improvements.

3. Schedule Update. The District shall ensure the construction schedule for the Hook Ramp Improvements, or any phase thereof, is updated to reflect current conditions. The District shall provide the City written notice if the District anticipates that a portion or the entirety of the construction schedule will not be met and inform the City of actions it is taking to correct or mitigate the effects thereof. The City must approve any action that would result in the construction work, supplies, equipment or services to exceed the amount provided for in the construction budget.

4. Construction Observation. The District shall ensure that on-site observations of the Hook Ramp Improvements construction are made at all appropriate intervals, and that it is apprised with the progress, quantity and quality of the construction work, and that such work, when completed, will be in accordance with the CDOT IGA and the Contract Documents. The District shall ensure that on-site observations include the exercise of reasonable judgment to guard the City against any defects or deficiencies in the Hook Ramp Improvements construction. The District shall keep all reports of on-site observations for the City's review and shall promptly provide written notice to the City, including the applicable report, should a report identify material defects or deficiencies in such construction or any other issue that may affect compliance with the CDOT IGA, Contract Documents, or the construction cost, budget or schedule.

5. Limits on District Responsibilities. The District shall not be responsible for the design of the Hook Ramp Improvements, the construction means, methods, techniques, sequences or procedures employed by trade contractors, or the safety precautions and programs utilized in the construction of the Hook Ramp Improvements. The District shall not be responsible for a trade contractor's schedule or failure to carry out work in accordance with the CDOT IGA or Contract Documents. The District shall not be

responsible for acts, or for failures to act, or omissions of trade contractors, subcontractors, vendors, the CM, DD or Engineer, or any other person(s) engaged to design or construct the Hook Ramp Improvements.

6. Progress Reports. The District shall forward to the City all progress reports prepared by the CM that relate to construction of the Hook Ramp Improvements.

7. Testing. The District shall ensure that all third-party structural, mechanical, soils, laboratory, tests, inspections and reports required by the CDOT IGA, the Construction Documents, or by federal, State or local regulatory approvals are performed in accordance with the same.

8. Unforeseen or Concealed Conditions. The District shall give the City written notice of any unforeseen or concealed condition related to or that may otherwise impact the Hook Ramp Improvements construction within a reasonable time after discovery of such condition, including but not limited to notice of pre-existing hazardous materials or toxic substances. Such notice shall include estimated impacts on the construction cost, budget and schedule, and recommendations to correct or mitigate such impacts.

9. Hazardous Materials. The City shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials, or toxic substances in any form at the project site for the Hook Ramp Improvements. The District shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the City and any City employees or agents from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, fines, judgements and penalties arising out of or resulting from performance of the Services in any area affected by hazardous materials or toxic substances, except to the extent that such damage, loss or expense is due to the fault or negligence of the City.

10. Change Orders. The District shall have sole discretion in executing change orders for or amendments to trade contracts, vendor purchase orders or any other agreement related to Hook Ramp Improvements construction, except that the District must obtain the City's approval of any change order or amendment that would result in the inability to meet the construction schedule, increase the construction cost or exceed the budget for such work, materials, equipment or services.

11. Shop Drawings. The District shall provide to the City or, a person designated by the City, for approval thereby, all shop drawings, product data, samples and other submittals related to the Hook Ramp Improvements construction, and shall not authorize any work, materials, equipment, or services related thereto until the City or its designated person provides such approval.

12. Record Copies. The District shall make available to the City record copies of all Contract Documents and any permits, reports, drawings, test results, required submittals, or other documentation related to the Hook Ramp Improvements construction.

13. Provision of Warranties. The District shall ensure secure and assign (or otherwise transmit) to the City warranties and similar submittals required by the Contract Documents for the Hook Ramp Improvements construction, and deliver to the City all keys, manuals, record drawings and maintenance stocks. The District, if directed by the City, shall ensure that annual warranty inspections are performed in accordance with a warranty period set forth in the Contract Documents.

14. Evidence of Satisfaction of Liens. The District shall provide the City with written evidence that all persons who have done work or furnished material under this Agreement and are entitled to liens therefor under any laws of the State of Colorado have been fully paid or are not entitled to such liens. Final payment shall not be made to the District until the City is reasonably satisfied that all claims or liens have been satisfied by the District.

15. Acceptance of Improvements. No act of the City or of any representative thereof, either in superintending or directing the Services, or any extension of time for the completion of the Hook Ramp Improvements, shall be regarded as an acceptance of such Services or improvements or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of the City. Before any final certificate shall be issued, the District shall execute an affidavit on the certificate that it accepts the same in full payment and settlement of all claims on account of Services made and materials furnished under this Agreement, and that all claims for materials provided or labor performed have been paid or set aside in full. No waiver of any breach of this Agreement by the City or anyone acting on its behalf shall be held as a waiver of any other subsequent breach thereof. Any remedies provided herein shall be cumulative.

16. Guaranty of Work. The District agrees to guarantee all work under this Agreement for a period of one year from the date of final acceptance by the City. If any unsatisfactory condition or damage develops within the time of this guaranty due to materials or workmanship that are defective, inferior, or not in accordance with this Agreement, as reasonably determined by the City, then the District shall, when notified by the City, immediately place such guaranteed work in a condition satisfactory to the City. The City shall have all available remedies to enforce such guaranty, except that the City shall not have any work performed independently to fulfill such guaranty and require the District to pay the City such sums as were expended by the City for such work, unless the City has first given notice to the District of the deficiency and has given the District a reasonable opportunity to cure the same.

D. Accounting Records. The District shall maintain and keep accurate records consistent with general accounting standards, as applicable, and satisfactory to the City, regarding the District's incurrence of Construction Costs and the costs of performing Additional Services.

E. Coordinated Services. [LIST]

F. **Performance Deadlines.** [LIST]

EXHIBIT C
CONSTRUCTION COSTS

EXHIBIT D

CONTRACTED ENTITY INSURANCE REQUIREMENTS

For the duration of this Agreement, the following insurance requirements apply..

1. Contracted entities shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the contract documents by reason of failure to procure or maintain insurance, or by reason of failure to procure or maintain insurance in sufficient amounts, durations, or types.

2. Unless a contracted entity's activity is insured under the District's own policy required by this Agreement under paragraph 9.C., a contracted entity shall procure and maintain, and shall cause each of its subcontractor(s) to procure and maintain (or shall insure the activity of the subcontractor(s) in the contracted entity's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the District, as required by the City. All coverages shall be continuously maintained from the date of commencement of the a contracted entity's work or services. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

A. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work or services under the agreement, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee.

B. Comprehensive General Liability insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision.

C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate with respect to each of the contracted entity's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision.

3. The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the District, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the District, its officers, or its employees, shall be excess and not contributory insurance to that provided by the contracted entity. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The contracted entity shall be solely responsible for any deductible losses under each of the policies required above.

4. Certificates of insurance shall be completed by the contracted entity's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City. Each certificate shall identify the Hook Ramp Improvements project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the District. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The District reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

5. Failure on the part of the contracted entity to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the District may immediately terminate its contract with the entity, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the District shall be repaid by the contracted entity to the District upon demand, or the District may offset the cost of the premiums against any monies due to the contracted entity from the District .

EXHIBIT E
NECESSARY CONTRACT DOCUMENTS

(Local \$CDOTWRK & MTCE)
PROJECT: CC 0703-453 (22417)

REGION: 1 (jh)

CONTRACT

THIS CONTRACT, executed this ____ day of _____, _____ by and between the State of Colorado, for the use and benefit of the Colorado Department of Transportation (“State” or “CDOT”) and City of Wheat Ridge, 7500 West 29th Avenue, Wheat Ridge, Colorado, 80033, CDOT Vendor #: 0002000099 (“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 400, Function 3301, GL Acct. 4511000010, WBS Element 22417.20.10, (Contract Encumbrance Amount: \$0.00);
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. 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 Contract and to expend its funds for the Contribution;
5. The Parties also desire to enter into this Contract to delineate each one’s responsibilities for maintenance of the I-70 and 32nd Avenue Interchange (Project);
5. The Local Agency has funds available and desires to provide 100% of the funding for the Work;
6. The State and Local Agency have the the resources to perform the desired maintenance for the Project;
7. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S.;
8. The Parties hereto desire to agree upon the division of work and maintenance 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's construction oversight and maintenance responsibilities associated with the I-70 and 32nd Avenue Interchange (Work), and the Local Agency shall provide their Contribution toward the Project, in Wheat Ridge, 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:

1. This Contract
2. **Exhibit A** (Scope of Work)
3. **Exhibit B** (Maintenance Responsibilities)
4. Other Exhibits in descending order of their attachment (if any).

Section 3. Term

This Contract shall be effective upon approval of the CDOT Chief Engineer or designee. The term of the funding portion of this Contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency. The State and Local Agency will maintain and operate the improvements constructed under this Contract for their useful life.

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 \$20,000.00.
- C. **The maximum amount payable by the Local Agency under this Contract shall be \$20,000.00** 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 Contract.
- 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.

Section 6. State and Local Agency Commitments

The Scope of Work (**Exhibit**) 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 Contract 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 and Exhibit B**). 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 Contract.
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 Contract, 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 Contract 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 State and Local Agency will maintain and operate the improvements constructed under this Contract at their own cost and expense during their useful life as shown in **Exhibit B**, in a manner satisfactory to the State and FHWA. The State and 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 and Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this Contract. The State and Local Agency shall maintain such records for a period of three (3) years after the date of termination of this Contract 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 Contract may be terminated as follows:

- A. Termination for Convenience. The State may terminate this Contract at any time the State determines that the purposes of the distribution of moneys under the Contract 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 Contract, or if the Local Agency shall violate any of the covenants, Contracts, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract 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 Contract 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 Contract 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 Contract 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 Contract 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 Contract and to bind the Local Agency to its terms. The person(s) executing this Contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this Contract.

Section 15. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 1, 2000 South Holly Street, Denver, CO 80222. Said Region Director will also be responsible for coordinating the State's activities under this Contract 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:
Steve Sherman
CDOT Region 1
2000 South Holly Street
Denver, Colorado 80222
303-512-5986
steve.sherman@state.co.us

If to the Local Agency:
Scott Brink
City of Wheat Ridge
7500 West 29TH Avenue
Wheat Ridge, Colorado 80033
303-235-2860
sbrink@ci.wheatridge.co.us

Section 16. Successors

Except as herein otherwise provided, this Contract 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 Contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this Contract 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 Contract shall be deemed an incidental beneficiary only.

Section 18. Governmental Immunity

Notwithstanding any other provision of this Contract to the contrary, 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, 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 Contract may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Contract, the terms of this Contract 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 Contract 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 Contract 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 Contract Terms

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the Contract 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 Contract 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 Contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Contract shall be effective unless agreed to in writing by both Parties in an amendment to this Contract that is properly executed and approved in accordance with applicable law.

Section 24. Disputes

Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract, which is not disposed of by Contract, 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 Contract 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 Contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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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 Wheat Ridge</p> <p>By: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation</p> <p>By _____ Joshua Laipply, P.E., Chief Engineer (For) Michael P. Lewis, Executive Director</p> <p>Date: _____</p>
<p style="text-align: center;">2nd The Local Agency Signature [if Needed]</p> <p>By: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center; font-size: 100px; opacity: 0.5;">DRAFT</p>

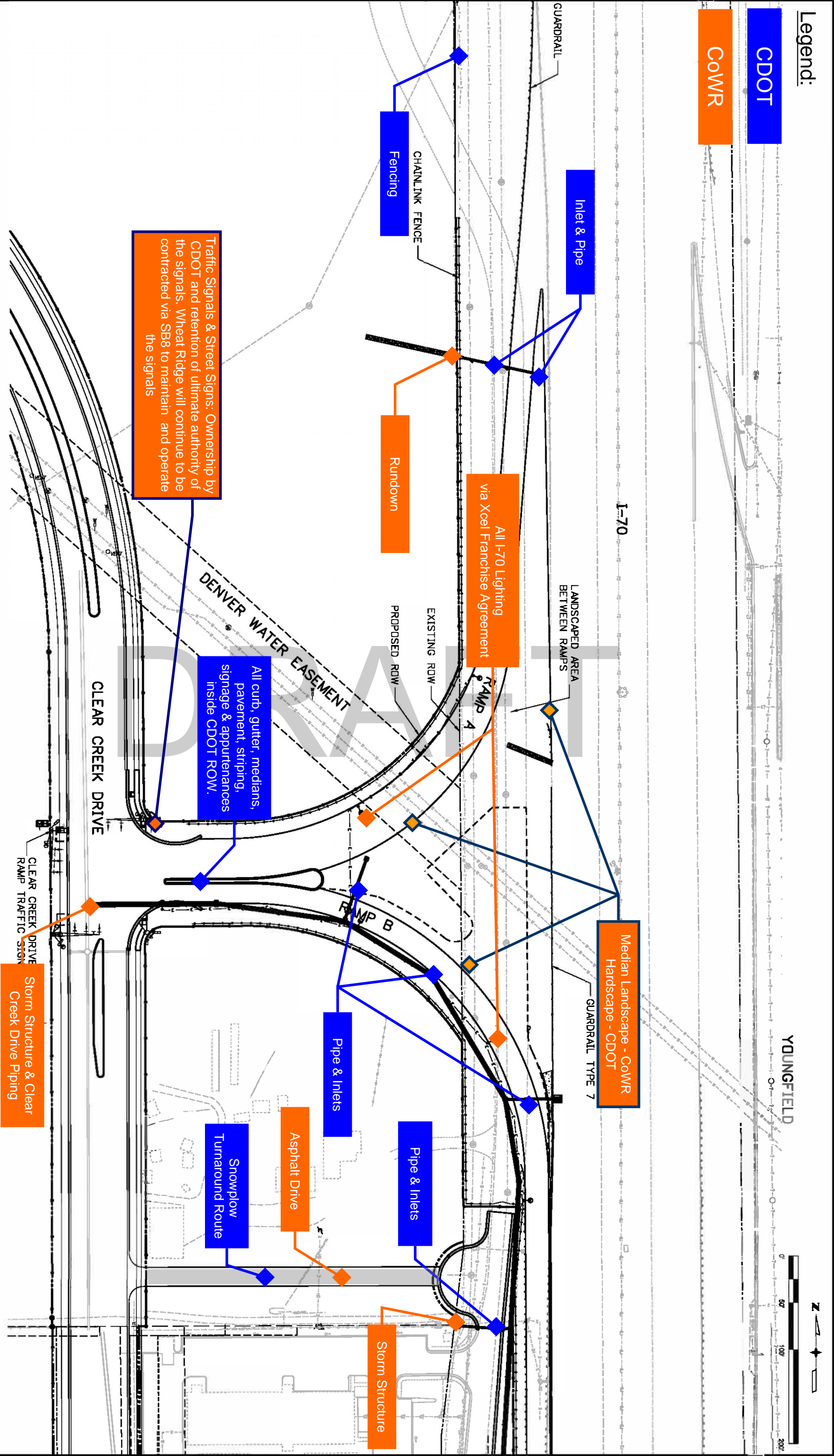
Exhibit A Scope of Work

This IGA between CDOT and the City of Wheat Ridge is to document construction oversight and maintenance responsibilities for the new/changed access at Westbound (WB) Interstate 70 (I-70), associated with the I-70/32nd Avenue interchange, being implemented in association with nearby development activity, the proposed Clear Creek Crossing (CCC) mixed use development. No State or Federal Funds are being used for construction of this project.

The City of Wheat Ridge agrees to pay CDOT \$20,000 for part-time review of the project by a CDOT Engineer, who will represent CDOT interests with regard to work quality and impact to the traveling public on westbound I70. By the permit through CDOT Region 1 Permits, CDOT will retain final acceptance authority for all facilities and appurtenances to be owned and maintained by CDOT.

Through many discussions, the maintenance of facilities has been agreed to as represented in the attached graphics (3 pages). Also, as shown in the graphics, a turn-around for snow plows has been agreed to within the development, such that CDOT plows will be able to plow the I70 facility in much the same way as exists prior to construction.

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Legend:

CDOT

CoWR

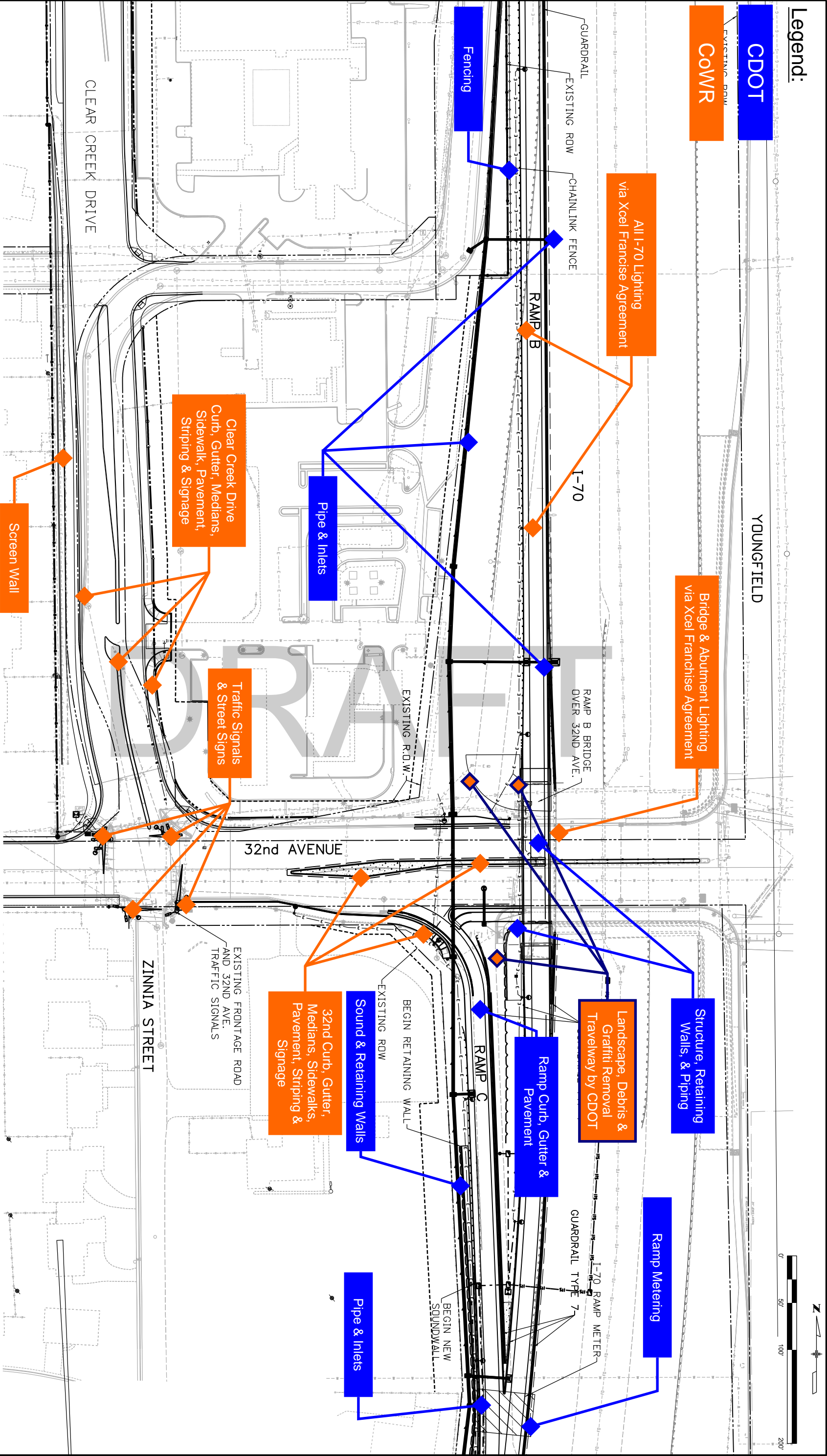
YOUNGFIELD



Print Date: 11/8/2017		Sheet Revisions		For Review		IGA EXHIBIT 1		Project No./Code	
File Name: IGA Sheet 1.dgn		Date:		No Revisions:		Designer:		Project Number	
Hort. Scale: 1:100		Comments		Revised:		Detailer:		Code	
Unit Information		Unit Leader Initials		Void:		Sheet Subsect:		Sheet Number	
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1449 WEST COLFAX AVE.
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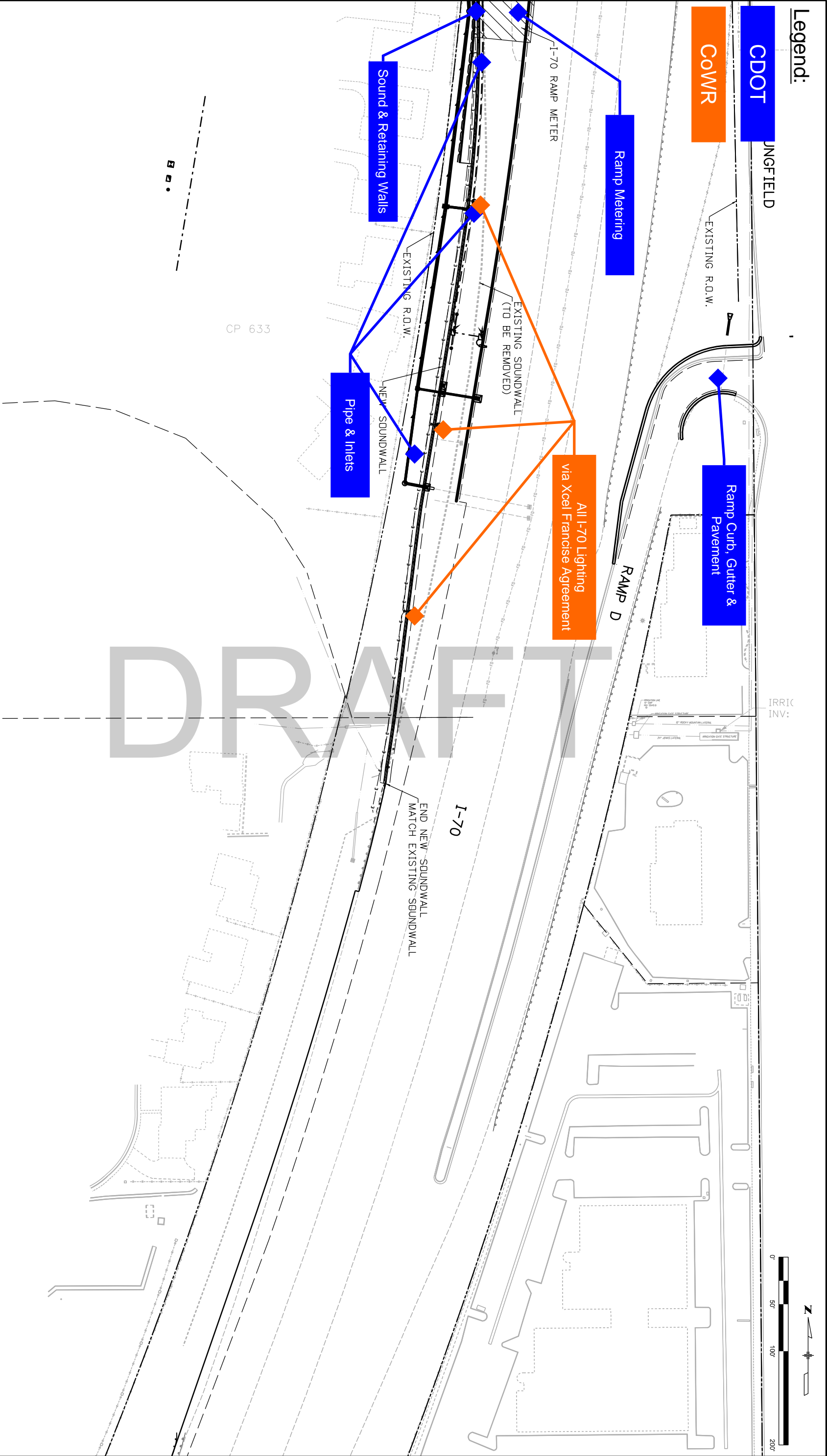


Print Date: 11/9/2017		Sheet Revisions		For Review		Project No./Code	
File Name: IGA Sheet 2.dgn		Date:		No Revisions:		IGA EXHIBIT 2	
Hortz. Scale: 1:100		Comments		Revised:		Project Number	
Unit Information		Init.		Void:		Code	
Unit Leader Initials						Structure Numbers	
						Subset Streets:	
						Sheet Number	



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Print Date: 11/9/2017		Sheet Revisions		<div><div></div><div><div>MARTIN/MARTIN</div><div>CONSULTING ENGINEERS</div><div>12499 WEST DULFAX AVE. LAKEWOOD, CO 80215 303.431.6100 FAX 303.431.4028</div></div></div>	<div><div>For Review</div><div>No Revisions:</div><div>Revised:</div><div>Void:</div></div>	IGA EXHIBIT 3				<div><div>Project No./Code</div><div>Project Number</div><div>Code</div><div>Sheet Number</div></div>	
File Name:	IGA Sheet 3.dgn										
Horiz. Scale:	1:100										
Unit Information	Unit Leader Initials										
0000		Date:	Comments	Init.	Designer:		Structure Numbers	Sheet Subst:		Sheet Number	