

SPONSORED BY: COUNCIL MEMBER MARTIN

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-74
Series of 2006

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A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF THORNTON FOR THE CONSTRUCTION OF THE 120TH AVENUE AND GRANT STREET INTERSECTION IMPROVEMENTS

WHEREAS, the 120th Avenue and Grant Street intersection is jointly situated within the corporate limits of Northglenn and Thornton; and

WHEREAS, the Cities desire to enter into an agreement for the construction of the Intersection Project and Grant Street Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

The Intergovernmental Agreement between the City of Thornton and the City of Northglenn for the construction of the 120th Avenue and Grant Street intersection improvements is hereby approved and the Mayor is authorized to execute this Agreement on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this ____ day of _____, 2006.

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:

City Attorney

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF THORNTON AND THE CITY OF
NORTHGLENN FOR THE CONSTRUCTION OF THE
120TH AVENUE AND GRANT STREET INTERSECTION IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2006, by and between the City of Thornton, a home rule municipal corporation ("Thornton") and the City of Northglenn, a home rule municipal corporation ("Northglenn") (or collectively referred to as the "Cities or Parties").

WITNESSETH

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

WHEREAS, the 120th Avenue and Grant Street intersection is jointly situated within the corporate limits of Northglenn and Thornton with the traffic signals located at the northeast and northwest corners of the 120th intersection in Thornton and the traffic signals located at the southeast and southwest corners of the 120th intersection in Northglenn; and

WHEREAS, the Parties have entered into an intergovernmental agreement for the design of the intersection improvements at the intersection of 120th Avenue and Grant Street dated June 6, 2005 ("Design IGA") and the Cities desire to construct the newly designed improvements at 120th Avenue and Grant Street that includes: double left turn lanes on 120th Avenue to northbound and southbound Grant Street, double left turn lanes on Grant Street northbound and southbound, a right turn lane to northbound Grant St, a right turn lane to southbound Grant Street, and the required traffic signal improvements (the "Intersection Project"); and

WHEREAS, Northglenn desires to proceed with an additional project located contiguous to the Intersection Project to the south that includes the realignment, and the construction of additional lanes and intersection on Grant Street (the "Grant Street Project"); and

WHEREAS, Thornton and Northglenn desire to combine the Intersection Project and the Grant Street Project to avoid the coordination of more than one contractor working in the same area, cost benefits, and time efficiencies; and

WHEREAS, the Cities desire to enter into an agreement for the construction of the Intersection Project and Grant Street Project (collectively the "Project").

NOW THEREFORE in consideration of the promises and conditions contained herein, the Cities hereto agree as follows:

I. ADMINISTRATION

A. Project Design

The Cities have jointly selected JR Engineering ("JR") to be the Design Contractor pursuant to the Design IGA. At the time that the Project design is complete and both Parties concur with the completed design, the Parties shall exchange letters with each other to that effect in accordance with the notice provisions provided in Section IV herein. Each Party shall be responsible for the design costs as provided in the Design IGA.

B. Right of Way

Each Party is required to acquire the necessary property interests located within its jurisdiction as defined in the Project Design final approved right of way plans. Each Party shall be responsible for the costs associated therewith. All property interests necessary to construct the Project shall be acquired and documentation evidencing such acquisition shall be provided to the other Party no later than the date of Construction Contract award.

C. Permits and other Approvals

The Parties hereto shall cooperate with each other and with the selected construction contractor in connection with any necessary municipal, state, federal or other permitting associated with the Project. All permits and approvals as required by state and federal authorities shall be acquired as necessary in accordance with the Contract Documents. The Contractor selected for the Project shall obtain all necessary permits associated with and required by the Project.

D. Project Management – Construction Services

Thornton and Northglenn shall perform the construction management duties within their respective jurisdictions associated with the Intersection Project portion of the Project and Northglenn shall perform the construction management duties associated with the Grant Street Project portion of the Project. Both Cities shall enter into any contracts necessary to construct the Project including geotechnical and testing services. The Parties shall be responsible for costs associated with such contracts in accordance with Section II herein.

E. City Representatives

Thornton and Northglenn shall each designate a City Representative who shall oversee the Project on behalf of each City. The Cities recognize that it is an important goal that decisions are promptly made in order to avoid delays and/or additional costs on the Project and to that end, each City will delegate sufficient authority to its City Representative to enable each to meet that goal. Each City Representative shall remain current on all events impacting the Project and shall promptly respond to all issues such that the Project is not adversely impacted.

F. Construction

1. Project Completion

The Parties agree and acknowledge that it is essential to each Party that the entire Project be completed. Neither Party shall have the right to stop or significantly delay construction, or to take any action that would cause construction to be stopped or significantly delayed, without the written consent of the other Party.

2. Contracts Documents

Upon completion of the design, Thornton and Northglenn shall develop the contract documents for the construction portion of the Project. The Cities agree that the portion of the Project located within its jurisdiction shall be designed and constructed in accordance with that City's standards and specifications with the exception of 11-foot wide lanes at the Intersection, which are necessary to accommodate improvements. The contract documents shall provide that the contractor shall provide a two (2) year warranty clause for all Project work performed within the City of Northglenn. Any costs associated with such two-year warranty shall be borne by Northglenn. The contract documents will include a bid schedule for each of the two categories: work to be completed in Thornton; and work to be completed in Northglenn in order to enable the Parties to determine which entity is responsible for the costs associated with the contractor's pay requests and to enable the Contractor to issue separate invoices for the Parties based on that portion of the Project for which each Party is responsible. Each Party represents that it will be responsible for the costs associated with its portion of the Project and will pay such costs directly to the contractor within 30 days of invoice. Upon finalization of the contract documents, the Cities shall advertise the Project for construction bids. Upon receipt of the bids, the Parties shall jointly select the construction contractor based on the lowest responsible bidder. Thornton shall award, execute and administer the contract for construction Thornton reserves the right to reject all bids.

3. Invoices

The contract documents shall require the contractor to invoice each City for work completed in their respective jurisdictions.

4. Change Orders

The City Representatives shall meet on a weekly basis to review Project status and all Project change orders. The Cities agree that each City has sole discretion to challenge or dispute any change order that solely affects work in that portion of the Project located inside of that Party's jurisdiction unless such dispute delays the Project work. In that case, the City

Representatives shall use their best efforts to resolve the disputed change order to avoid any delay in the work. In the event the City Representatives are unable to resolve the disputed change order, the issue will be resolved in accordance with the dispute resolution provisions provided in Paragraph V herein.

5. Joint and Several Liability

The construction contract documents for the Project shall provide that the Cities are separately and severally liable to the Contractor for the work related to the portions of the Project located within each City's separate jurisdiction.

6. Design Considerations

Due to several design considerations in the Project, the Parties have agreed that in exchange for the acquisition of additional right-of-way by Thornton to avoid the relocation of the Northglenn lift station, Northglenn shall reimburse Thornton by paying \$50,784.00 due to the contractor for Thornton work on the Project.

7. Project Schedule

The Parties shall use best efforts to enable Bid Opening to occur in spring of 2006. The Bid Documents shall provide that the project shall be complete within 150 days of Notice to Proceed, or as amended during bidding. The contract documents shall include a bid schedule for each of the Two Cities.

G. Maintenance

The Parties agree that any maintenance of the intersection once the Intersection Project is completed shall be performed as provided in Maintenance IGA entered into between the Parties dated July 7, 1983, as amended from time to time ("Maintenance IGA").

II. PROJECT FUNDING

Each Party shall be responsible for the costs associated with right of way acquisition and construction including but not limited to change orders, geotechnical services, testing, and inspections within its jurisdiction in connection with the Project except as specifically provided herein. Each Party has the right to approve any change orders associated with any work completed in that Party's jurisdiction subject to Section I(F)(1) herein. Both Parties acknowledge that each Party has the sole discretion to expand the Project work and associated budget for work that is to be performed solely within that Party's jurisdiction. Each Party represents that it has adequate funds in its budget to pay for its portion of the costs of the Project.

III. TERM

This Agreement shall terminate upon the expiration of the warranties associated with the Contract Documents subject to Section VIII herein.

IV. NOTICE

Any notice required by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party or Cities. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Thornton
Jack Ethredge, City Manager
9500 Civic Center Drive
Thornton, CO 80229

City of Northglenn
Leslie Cullen, Interim City Manager
11701 Community Center Drive
Northglenn, CO 80233

V. DISPUTE RESOLUTION

In the event of any disagreement associated with the Project and prior to the commencement of any formal proceedings, the Parties shall continue performance as set forth in this Agreement and the City Representatives in good faith shall attempt to resolve the dispute. In the event the City Representatives are unable to reach agreement and one of the City Representatives concludes that a good faith amicable resolution through continued negotiation of the matter at issue does not appear likely, such City Representative shall notify the other Party in writing.

In the event the Cities reach such an impasse relating to a decision or issue that threatens to significantly delay or stop construction of the Project, the Parties agree to retain, within five (5) business days following such notice, a mutually acceptable Independent Decisionmaker to make an interim decision and /or determination that will allow construction of the Project to proceed according to the Project's schedule. The Parties agree to share equally the fees of the Independent Decisionmaker.

While each City agrees to abide by said interim decision until the Project has been substantially completed, it shall do so under a complete reservation of its rights and without prejudice to any claims it may have against the other Party or others.

VI. LITIGATION

Each Party hereto shall be responsible for any suits, demands, costs or actions at law resulting from its own acts or omissions.

VII. INTEGRATION AND AMENDMENT

This Agreement represents the entire Agreement between the Cities and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Cities.

VIII. TERMINATION OF AGREEMENT

This Agreement may be terminated in writing by either of the Cities, but only if: (1) there are no contingent, outstanding contracts for construction; and, (2) the lowest responsible bid for the Project exceeds the amount budgeted by either Party. All costs associated with the cancellation, of any joint contracts, e.g. the Consultant's contract or portion thereof, shall be paid equally by the Cities.

IX. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

X. SEVERABILITY

If any article, section, paragraph, sentence, clause or phrase of this Agreement is held to be unconstitutional or invalid for any reason, such holding shall not affect the validity, enforceability or constitutionality of the remaining provisions of this Agreement.

XI. WAIVER

A waiver by any Party of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

XII. PARAGRAPH CAPTIONS

The captions of the paragraphs are set forth only for the convenience and reference of the Cities and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

XIII. GOVERNMENTAL IMMUNITY

The Cities acknowledge that each Party, their officers and employees, are relying on, and do not waive or intend to waive, by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado

Governmental Immunity Act, C.R.S. 24-10-101 et seq., as it is from time to time amended, or otherwise available to the Cities, their officers, or employees.

IN WITNESS WHEREOF, the Cities here have executed this Agreement to be effective as of the date first above written.

CITY OF THORNTON

Jack Ethredge, City Manager

ATTEST:

Nancy A. Vincent, City Clerk

APPROVED AS TO FORM:

Margaret Emerich, City Attorney

CITY OF NORTHGLENN

Kathleen M. Novak, Mayor

ATTEST:

Diana L. Lentz, City Clerk

APPROVED AS TO FORM:

City Attorney