

RESOLUTION NO. R - 019 - 105

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE MERIDIAN METROPOLITAN DISTRICT AND THE BOARD OF
COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO,
REGARDING COST SHARING FOR THE JAMAICA / MERIDIAN INTERSECTION
IMPROVEMENT PROJECT

WHEREAS, the Board of County Commissioners of the County of Douglas (the "County") and the Meridian Metropolitan District (the "District"), desire to enter into an intergovernmental agreement concerning funding for the Jamaica / Meridian Intersection Improvement Project; and

WHEREAS, the County is willing to enter into such an agreement with the District in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto; and

WHEREAS, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S.; now, therefore,

BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the intergovernmental agreement between the Board of County Commissioners of the County of Douglas and the Meridian Metropolitan District, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County.

PASSED AND ADOPTED this 24th day of September, 2019, in Castle Rock, Douglas County, Colorado.

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

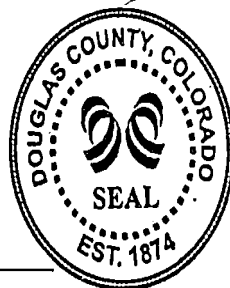
BY: Roger A. Partridge

ROGER A. PARTRIDGE, Chair

ATTEST:

Kristin Bandlett

Kristin Bandlett, Clerk to the Board



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE MERIDIAN
METROPOLITAN DISTRICT AND THE BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF DOUGLAS REGARDING COST SHARING FOR THE JAMAICA /
MERIDIAN INTERSECTION IMPROVEMENT PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the Meridian Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, (the "District"), and the Board of County Commissioners of Douglas County, Colorado (the "County"), hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the County and the District desire to cooperate in the design and construction of the Jamaica Street / Meridian Boulevard Intersection Improvement Project, (the "Project"). This intersection and associated roadways are critical components of our regional transportation network and the proposed Project will help improve safety and mobility while reducing traffic congestion now and in the future. The Project is shown in **Exhibit A**, which is attached hereto and incorporated by this reference; and

WHEREAS, the County and the District agree the Project shall be completed in exchange for mutual commitments of the Parties hereto; and

WHEREAS, the County and District desire to share in the cost of the Project, as described herein; and

WHEREAS, the County pursued and is responsible for obtaining additional funding from the Southeast Public Improvement Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, ("SPIMD"), which indicated its willingness to contribute \$250,000 towards the construction costs of the Project; and

WHEREAS, the District and County are responsible for various Pre-Construction Tasks and Construction Tasks, as described in this Agreement; and

WHEREAS, the County is responsible for the completion of the construction of the Project, as described in this Agreement; and

WHEREAS, the Parties further desire to memorialize their agreements concerning the participation in the funding of the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

1. **Project Cost Estimate.** In February 2019, the Qualified Engineer provided the Parties with an updated Total Project Cost Estimate, which is approximate \$3,350,000 which includes approximately \$250,000 for Pre-Construction Tasks managed by the District and

\$3,100,000 for construction costs to be managed by the County (which includes construction costs and a 15% contingency, expenditures for construction, construction management and material testing consultant services). This Total Project Cost Estimate will be used to estimate the Parties financial contributions; and the actual contributions will be based on the actual project costs as discussed in this Agreement.

2. **Consultant Selection.** The Parties agree to retain the District's consultant, Kimley-Horn, to provide professional engineering services associated with this Project, hereinafter referred to as (the "Qualified Engineer"), because they are most familiar with the Project and the Parties agree it would be cost-effective to continue using them to complete final design and prepare the construction bid documents (plans and specifications).

3. **District Contribution and Responsibilities.**

The District shall be responsible for managing all Pre-Construction Tasks except as expressly provided in Section 4, (the "County Contribution and Responsibilities").

The Qualified Engineer shall be managed by the District; and the District shall be responsible for contracts and payments for all the Pre-Construction Tasks, including those tasks performed by the Qualified Engineer, their subconsultants and other consultants that are working directly for the District on this Project.

The District is responsible for managing the Project Pre-Construction Tasks including but not limited to the following: field surveys, traffic studies, traffic signal design, preliminary and final design for all Project elements, right-of-way research, preparing legal descriptions for the new right-of-way required for the Project, (including Project related water quality pond easements), Subsurface Utility Engineering (SUE) Report and Plans, locating existing utilities, (including potholing), and utility coordination.

The District is responsible for finding a final location for the water quality pond(s) associated with the Project; and obtaining the necessary easements to accommodate the flows from the Project. The water quality pond(s) will be owned, maintained and operated by the District; and the District can utilize and enlarge Project related pond(s) to accommodate District related future development. The District is responsible for securing in its name the necessary permanent easements from the underlying property owner for the water quality pond(s) and securing a secondary permanent easement for the County. Said easement shall be conveyed to the County before the County will award a construction contract for the Project; and the District understands the County will be responsible to record these easement documents.

Expenditures incurred by the District for the Pre-Construction Tasks will be accounted for in the District's Contribution for the Project, except for those costs associated with the lighting, landscaping and irrigation which are the District's sole responsibility. Further, the District costs for design and construction, associated with utilities located outside of the County roadway right-of-way, lighting, irrigation and landscaping, shall be borne solely by the District and therefore are not considered as eligible as part of the District's Contribution to the Project.

Additionally, the District is responsible for installing new lighting and irrigation systems and providing all landscaping for the Project; and these costs are not included as part of the

District's Contribution to the Project. The lighting, irrigation and landscaping shall be installed by the District following substantial completion of the County's construction project.

During construction, the District shall coordinate with the County the installation of irrigation sleeves/conduits under the proposed new roadway alignment, which shall be installed by the County as part of the County's Construction Tasks. The District is responsible for providing the County with final design and as-built drawings for the lighting and irrigation systems as well as the landscaping. The costs for installing irrigation sleeves/conduits is an eligible Project cost that will be shared by the District and County utilizing the ratios established in the Agreement, namely 45% from the District and 55% from the County.

The District is responsible for coordinating all utility relocation activities for all utilities located within District utility easements or outside of the public right-of-way. These utilities shall be relocated prior to issuance of a Notice to Proceed by the County.

Any utilities that must be relocated during construction that are located within the public right-of-way, except for water/sewer/irrigation or any other District owned utilities, shall be considered a Construction Task and is an eligible Project cost that is shared by the District and the County. Any costs associated with the relocation of District owned utilities in the right-of-way shall be the responsibility of and borne solely by the District.

Upon receipt of a written notice from the County of their intent to award a construction contract(s), the District shall review the Actual Bid Tabulations and concur with the award of construction contract(s) and provide the County with a written response within ten calendar days.

Based on the Total Project Cost Estimate of \$3,350,000, it is anticipated that the District shall contribute Forty-Five Percent (45%) of the Actual Total Project Costs or an amount not to exceed One Million Five Hundred Seven Thousand and Five Hundred Dollars and No Cents (\$1,507,500.00), hereinafter referred to as the "District Contribution" for the sole purpose of contributing to the Project. This District Contribution includes all eligible Pre-Construction Tasks but does not include any additional costs the District is responsible for as identified in this Agreement.

The District's payment to the County shall be adjusted (reduced) by the District's actual eligible Pre-Construction Tasks expenditures, which are currently estimated not to exceed \$250,000. Therefore, the District's total payment to the County for the Construction Tasks is estimated to not exceed \$1,507,500 minus the actual eligible Pre-Construction Tasks expenditures.

The District is responsible for tracking eligible Project Pre-Construction costs and this information will be used to provide a Pre-Construction cost summary to the Parties disclosing all eligible District expenditures. Prior to substantial completion of the Project, the District will provide this cost summary to the County within thirty (30) days upon written request by Douglas County; and this information will be used to determine the District's final construction payment to the County for its share of the Actual Total Project Cost.

During construction of the Project, the County will invoice the District for 45% of the Actual Total Project Cost and the District shall submit its payment to the County within 45-days

(via electronic deposit or delivery of a check to the Douglas County Public Works Engineering Department (Attention: Ashley Pennick).

In no event will the District be liable for contributing more than the District Contribution, including for any additional engineering services directly related to work authorized by the County for additional improvements that are not associated with those in the original bid documents, or for any unforeseen construction costs or claims, except for claims associated for utility relocation delay or other costs that are the District's sole responsibility as mentioned in this agreement. Unforeseen construction costs or claims associated with any utilities found during construction outside of the ROW or District owned easements, that were not identified in the SUE report and plans, will be considered a Construction Task, the cost of which will be shared by the District and the County utilizing the ratios established in the Agreement, namely 45% from the District and 55% from the County

4. County Contribution and Responsibilities.

The County will provide representatives from the Public Works Engineering Department to participate in the District's design review meetings for the Project. Final Project design decisions is ultimately the County's responsibility as the County will be responsible to own operate and maintain all Project related infrastructure, except for the water quality pond(s), lighting, landscaping and irrigation, which are the District's responsibility to own, operate and maintain.

The County is responsible for managing the construction phases of the Project, herein referred to as Construction Tasks.

The County shall be responsible for advertising, bidding and selecting the contractor for the Project in accordance with the County's current procedures. The County is responsible for awarding various construction contracts to the contractors and consultants selected by the County in order to provide construction, construction management and material testing consultant services for the Project. The County is responsible for selecting and awarding construction contract(s) to the lowest most responsive bidder(s) that will best serve the interest of the County; and selecting consultants most qualified and available to meet the proposed project objectives and schedule.

Following opening of the actual bids, the County will evaluate the contractor's proposals prior to making a recommendation to award construction contracts for the Project. If the County plans to award a construction contract, the County will send the District a written notice of its intent to award a construction contract and request written concurrence from the District prior to award. If the actual bid from the most responsive bidder is more than twenty percent (20%) of the Engineer's Estimate (as disclosed at the bidding opening), the County reserves the right to reject all bids and rebid the Project in the future.

The County is responsible for tracking monthly expenditures for all Construction Tasks and this information will be used to prepare invoices to be sent to the District to reimburse the County for its share of the construction cost as well as for their portion of construction management and material testing services expenditures. The County will invoice the District throughout the duration of construction (but not more than once a month). The County will provide the District with supporting documentation for the Construction Tasks with each invoice submitted.

The County is responsible solely for obtaining the SPIMD contribution of \$250,000 to be used for Construction Tasks expenditures of the Project. If the County is unsuccessful in obtaining some or all the SPIMD contribution, then the County is responsible for any shortfall up to but not to exceed SPIMD's full contribution of \$250,000.

Based on the Total Project Cost Estimate of \$3,350,000, it is anticipated that the County shall contribute Fifty-Five Percent (55%) of the Actual Total Project Costs or an amount estimated to not exceed One Million Eight Hundred Forty-Two Thousand and Five Hundred Dollars and No Cents (\$1,842,500.00), hereinafter referred to as the "County Contribution" for the sole purpose of contributing to the Project. The County Contribution includes a potential lump sum contribution from SPIMD for \$250,000 (approximately 7.46% of the Total Project Cost Estimate). The County Contribution shall be used solely for the Construction Tasks.

If the County elects to unilaterally increase its contribution, it may do so provided it does not include an increase in the District Contribution. The District Contribution shall not be increased without both Parties executing an amendment to this agreement prior to any additional expenditures that the County wants the District to participate in.

The County is responsible to complete the construction of the Project, (excluding the irrigation and landscaping which is to be performed by the District).

5. **Time of Performance.** The Parties acknowledge and agree that the County will award a construction contract on or before December 31, 2019 and that construction of the Project is anticipated to be substantially completed and open to traffic on or before **July 31, 2020**.

6. **Remedies.** The Parties hereto acknowledge and agree that each party may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available.

7. **Notice.** Any notice required or permitted 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. Such notice shall be deemed to have been given when deposited in the United States mail.

District: Meridian Metropolitan District
 Attn: Eric Hecox, General Manager, Special Districts
 6380 S. Fiddlers Green Circle, Suite 400
 Greenwood Village, CO 80111
Eric.Hecox@sheaproperties.com

With electronic
 copy sent to: MDalton@spencerfane.com

Douglas County: Douglas County
 Attn: Janet Herman, Director of Engineering Services
 100 Third Street, Suite 250
 Castle Rock, Colorado 80104
JHerman@douglas.co.us

With electronic
 copy sent to: attorney@douglas.co.us

8. **Appropriation.** Pursuant to C.R.S. § 29-1-110, the financial obligations of the District and the County contained herein which are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

9. **No Waiver of Governmental Immunity Act.** The Parties hereto understand and agree that the Parties, their commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

10. **Additional Documents.** The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

11. **Colorado Law.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

12. **Separate Entities.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

13. **No Third-Party Beneficiaries.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

14. **Severability.** It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

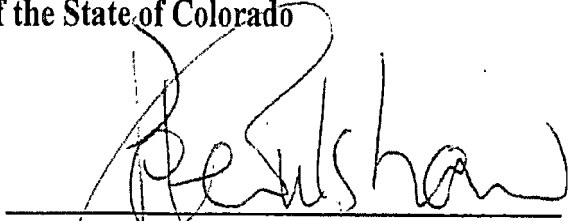
15. **Recitals.** The Recitals to this Agreement are incorporated herein by this reference.

16. **Entirety.** This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

[signature page follows]

IN WITNESS WHEREOF, this Agreement regarding cost sharing for the Jamaica / Meridian intersection improvement project is executed by the Parties hereto as of the date first written above.

MERIDIAN METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: 
Peter A. Culshaw
President

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY

Roger A. Partridge, Chair

ATTEST:

APPROVED AS TO CONTENT:

Clerk to the Board

Douglas J. DeBord
County Manager

Print Name – Clerk to the Board

APPROVED AS TO FORM:

APPROVED AS TO FISCAL CONTENT:

Chris Pratt,
Senior Assistant County Attorney

Andrew Copland,
Director of Finance

Attachment: Resolution-Jamaica-with-IGA-attached (5715 : IGA with Meridian Metro District Re: Cost Sharing, Jamaica/Meridian Intersection,