

RESOLUTION NO. R-021- 106

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

RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT
BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF
DOUGLAS, STATE OF COLORADO, AND PARK MEADOWS METROPOLITAN
DISTRICT, REGARDING FINANCIAL CONTRIBUTION TOWARD CONSTRUCTION
OF THE C-470 TRAIL MULTI-MODAL BRIDGES OVER YOSEMITE STREET AND
THE C-470 WESTBOUND ON-RAMP, DOUGLAS COUNTY PROJECT NUMBER CI
2015-015.

WHEREAS, the Board of County Commissioners of the County of Douglas (the "County") and **Park Meadows Metropolitan District (the "District")**, desire to execute an intergovernmental agreement regarding the **District's** financial contribution toward construction of the C-470 Trail Multi-Use Bridges over Yosemite Street and the C-470 Westbound On-Ramp; and

WHEREAS, the County is willing to enter into such amendment 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 **Park Meadows 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 28th day of September, **2021**, in Castle Rock, Douglas County, Colorado.

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

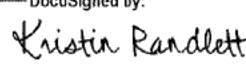

BY:

DocuSigned by:

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ABE LAYDON, Chair

ATTEST:

DocuSigned by:

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KRISTIN RANDLETT, Clerk to the Board

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS
AND
PARK MEADOWS METROPOLITAN DISTRICT
REGARDING FINANCIAL CONTRIBUTION TOWARD
CONSTRUCTION OF C-470 TRAIL MULTI-MODAL BRIDGES OVER
YOSEMITE STREET AND C-470 WESTBOUND ON-RAMP**

This INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this __ day of _____, 2021 (the "Effective Date"), by and between the Park Meadows Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), and the Board of County Commissioners of the County of Douglas, a body corporate and politic of the State of Colorado (the "County").

RECITALS

WHEREAS, the County is planning to construct two (2) multi-modal bridges to carry the C-470 Trail over Yosemite Street and over the C-470 Westbound On-ramp, anticipated to begin in the fall of 2021 (the "Project"); and

WHEREAS, the County has requested the District's financial support of the Project; and

WHEREAS, the District has previously indicated its willingness to contribute financially to advance the Project; and

WHEREAS, the parties and their residents and taxpayers will jointly benefit from the Project; and

WHEREAS, the District, in recognition of the importance and public benefit of the Project as well as the negative impact of the COVID-19 pandemic upon the County's revenues, is willing to make a one-time financial contribution to the Project, pursuant to the terms and conditions stated in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties agree as follows:

AGREEMENT

1. **DISTRICT CONTRIBUTION.** To facilitate the County's completion of the Project, the District agrees to make a one-time contribution to the County in the total amount of One Hundred Thousand Dollars (\$100,000.00), to be applied exclusively to the Project (the "Contribution"). The Contribution shall be used only for the Project and shall be used for no other purpose. In no event will the District be liable for paying the County any amount more than the Contribution, including for any additional work authorized by the County or for any unforeseen project costs or claims. The District shall remit payment of the Contribution within ten (10)

business days of the District's receipt of the County's written notice to the District of the County's award of the contract to construct the Project, which the County currently anticipates will occur around December 1, 2021 but shall not be later than December 31, 2021 unless an extension is granted by the District, which requires amending this Agreement by both parties. The following conditions shall apply to the Contribution:

- a. The County agrees that the District's contribution shall not create for the District any responsibility or liability with respect to the Project, which is the sole responsibility of the County.
- b. The County agrees that it will repay to the District the Contribution, in full, in the event the County fails to complete construction of the Project as evidenced by the County's preliminary acceptance of the work, by December 31, 2022. Repayment of the Contribution made pursuant to this Section 1 shall be made within ten (10) business days after demand is made therefor by the District.
- c. The County agrees and acknowledges that the Contribution is a one-time contribution and that the Contribution is not intended by the District to set a precedent of District contributions to County projects generally.

2. **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.

Douglas County: Douglas County
100 Third Street
Castle Rock, CO 80104
Attention: Director of Engineering Services

With a copy to: Email: attorney@douglas.co.us

Park Meadows Metropolitan District: Park Meadows Metropolitan District
c/o CliftonLarsonAllen LLP
8390 E. Crescent Parkway, Suite 300
Greenwood Village, CO 80111
Attention: Matt Urkoski, District Manager

With a copy to: Icenogle Seaver Pogue, P.C.
4725 South Monaco Street, Suite 360
Denver, CO 80237
Attn: Tamara K. Seaver
Email: TSeaver@ISP-Law.com

3. **APPROPRIATION.** Pursuant to Section 29-1-110, C.R.S., any financial obligations of the County and the District contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis.

4. **BREACH AND ENFORCEMENT.** It is specifically understood that, by executing this Agreement, each party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of either party to fulfill any obligation set forth herein shall constitute a breach of this Agreement. The parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado. This Section shall survive the termination of this Agreement.

5. **ASSIGNMENT.** Neither the District nor the County may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other party.

6. **TIME IS OF THE ESSENCE.** The parties acknowledge that time is of the essence in the performance of this Agreement.

7. **COLORADO LAW.** The laws of the State of Colorado shall govern this Agreement. 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.

8. **SEPARATE ENTITIES.** The parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither the County nor the District shall be deemed or constitute a partner, joint venturer, or agent of the other. Any actions taken by the parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other.

9. **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.

10. **NO WAIVER OF GOVERNMENTAL IMMUNITY ACT.** The parties hereto understand and agree that the District, its Board of Directors, officials, officers, directors, agents and employees, and the County, the members of its board of county commissioners, its 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, Sections 24-10-101 to 120, C.R.S., or otherwise available to the District and the County.

11. **HEADINGS.** The headings and captions in this Agreement are intended solely for the convenience of reference and shall be give no effect in the construction or interpretation of this Agreement.

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

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

14. **CONTRACT MODIFICATION.** This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the parties.

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

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

17. **COUNTERPART EXECUTION.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto as of the date first written above.

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY:

By: _____

Title: Chair

ATTEST:

APPROVED AS TO CONTENT:

Kristin Randlett,
Clerk to the Board

APPROVED AS TO FORM:

Douglas J. DeBord,
County Manager

APPROVED AS TO FISCAL CONTENT:

Chris Pratt,
Senior Assistant County Attorney

Andrew Copland,
Director of Finance

PARK MEADOWS METROPOLITAN DISTRICT

By: Meredith Sippel

Title: President

Attest:

[Signature]
_____, Secretary/Treasurer