

RESOLUTION NO. R – 022 - 044

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

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT
AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS,
STATE OF COLORADO, ASSOCIATED WITH THE HAVANA STREET AND
MERIDIAN BOULEVARD INTERSECTION IMPROVEMENT PROJECT,
DOUGLAS COUNTY PROJECT NUMBER CI 2020-040

WHEREAS, the Board of County Commissioners of the County of Douglas (the “County”) and the **Southeast Public Improvement Metropolitan District (“SPIMD”)**, desire to enter into an intergovernmental agreement associated with the Havana Street & Meridian Boulevard Intersection Improvement Project; and

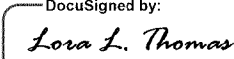
WHEREAS, the County is willing to enter into such an agreement with **SPIMD** in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto; and

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 **Southeast Public Improvement 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 12th day of April, **2022**, in Castle Rock, Douglas County, Colorado.

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

BY: 
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Lora L. Thomas
Chair, Douglas County Commissioners

ATTEST:


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 DocuSigned by:

Kristin Randlett, Clerk to the Board

**SOUTH I-25 URBAN CORRIDOR CAPITAL PROJECT IMPLEMENTATION
AGREEMENT ASSOCIATED WITH THE HAVANA STREET AND MERIDIAN
BOULEVARD INTERSECTION IMPROVEMENT PROJECT,
DOUGLAS COUNTY PROJECT NUMBER CI 2020-040**

THIS SOUTH I-25 URBAN CORRIDOR CAPITAL PROJECT IMPLEMENTATION AGREEMENT (this “Agreement”) is entered into and effective this _____ day of _____, **2022** (the “Effective Date”), by and between the SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“SPIMD”), and the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, OF THE STATE OF COLORADO, a body politic organized and existing by virtue of the laws of the State of Colorado (the “County”) (SPIMD and the County are referred to collectively herein as the “Parties” or individually as a “Party”).

WHEREAS, the Parties are legally empowered under their respective organizational documents and the laws of the State of Colorado to enter into this Agreement; and

WHEREAS, the Parties agree that there is a need to address current and future conditions at and to improve the intersection of Havana Street and Meridian Boulevard (as further described herein, the “Project”); and

WHEREAS, the South I-25 Urban Corridor Transportation Management Association (the “TMA”) and its member jurisdictions have developed a strategy for mitigation of impacts within an area referred to as the South I-25 Urban Corridor (the “Corridor”) and the Corridor’s transportation system, said strategy having been articulated in the Vision 2035 Plan adopted by the TMA and its member jurisdictions; and

WHEREAS, the commercial areas within the Corridor desired to establish a means of equitably mitigating their proportionate development impacts on the area’s regional transportation system, and SPIMD has been formed specifically to provide a mechanism for commercial properties to voluntarily impose a property tax on themselves to raise funds for this purpose; and

WHEREAS, SPIMD has to date invested or committed more than \$50 million in funding to partner with local jurisdictions in implementing qualified capital improvements within the Corridor, inclusive of a commitment of up to \$36 million in matching funds to support the TMA’s Vision 2035 Plan Capital Projects program; and

WHEREAS, SPIMD levies a property tax on commercial properties within the Corridor to provide such funding; and

WHEREAS, the Parties have in turn agreed to acknowledge that SPIMD funds are in part considered as mitigation for transportation impacts attendant to new commercial development within the Corridor; and

WHEREAS, the County has requested review of the Project by the TMA for conformance

with the TMA's Vision 2035 Policy and criteria, and the currently adopted TMA multi-year capital project funding plan, and has received a favorable response from the TMA; and

WHEREAS, the County has applied to SPIMD and requested a capital funding contribution to support the Project as further set forth herein; and

WHEREAS, the County has proposed and it is anticipated that the total cost for the Project will be shared among the County, the Meridian Metropolitan District and SPIMD (together, the "Project Partners"), as further set forth below; and

WHEREAS, SPIMD has budgeted and allocated capital funding for projects as part of the Vision 2035 Plan, and more specifically has allocated capital funding for projects within the designated Lincoln TMA Zone; and

WHEREAS, SPIMD has determined the Project and the County's capital funding contribution request fall under the designated Lincoln TMA Zone of the Vision 2035 Plan, SPIMD has adequate allocated funds remaining to support the County's request, and SPIMD desires to provide capital funding to contribute to the Project as further set forth herein; and

WHEREAS, both Parties have budgeted capital funding to perform their obligations under this Agreement; and

WHEREAS, the Parties desire to share in the financial responsibility for the Project on a matching funds basis on the terms and conditions and in the amounts further set forth herein; and

WHEREAS, based on the foregoing, SPIMD hereby agrees to provide a capital funding contribution to support the Project conditioned on adherence to the terms and conditions set forth herein; and

WHEREAS, the Parties wish to state herein their understanding as to how the Project will be financed and implemented.

NOW THEREFORE, as full consideration for and in furtherance of the goals, intents, and purposes of this Agreement, and in consideration of the mutual promises contained herein and other good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. Purpose.

The purpose of this Agreement is to memorialize SPIMD's agreement to provide a capital funding contribution to support the Project and to establish the process by which SPIMD's contribution will be accomplished.

The Parties understand and agree the Project will be undertaken generally in accordance with the Project depiction attached hereto as Exhibit A, which includes modifications identified during final design by HDR, (the consultant selected by the County to complete final design and prepare the final construction documents). HDR's suggested revisions have been approved by SPIMD, the County and Meridian Metro District. The proposed improvements generally conform to Exhibit A, and the final approved construction documents, (plans and specifications), shall be completed in conformance the County design and construction standards, and are incorporated by reference herein. The proposed Project will improve safety and traffic operations at both the Meridian/Havana and the Havana/Lincoln intersections as well as help reduce queuing for vehicles turning from eastbound Lincoln Avenue to northbound Havana Street.

SPIMD has set aside and agrees to contribute pursuant to the terms hereof an amount up to \$2,650,000 for the purpose of financially supporting the completion of the Project.

2. Project Funding.

A. SPIMD Contribution

SPIMD's contribution for the Project shall be, as matching funds to dollars contributed by the County for the Project, an amount up to and not to exceed Two Million Six-Hundred and Fifty Thousand Dollars and No Cents (\$2,650,000.00), to be paid directly to the County in accordance with Paragraphs 3 and 4 of this Agreement (the "SPIMD Contribution"). SPIMD agrees to contribute the SPIMD Contribution toward the "Actual Project Costs," which shall include all costs actually incurred to complete the Project, including but not limited to payment for pre-construction costs incurred by Douglas County during final design (which includes consultant services associated with survey, design, and subsurface utility engineering) utility relocation costs, construction activities (which includes consultant services associated with construction management assistance, inspections, and material testing), and payment of contractors contracted to complete the Project including all labor and materials necessary to complete the Project. However, costs to be funded shall not include the internal costs and expenditures of the Project Partners which may be incurred in completing the Project such as project management, accounting and legal costs.

B. Allocated Shares of Estimated Project Costs

The total estimated cost of the Project is **\$6,100,000**. The Parties agree that the Project Partners shall be responsible for funding individually allocated portions of the Project as detailed below; provided, the Parties understand and agree that the anticipated Project schedule and the proposed expenditures and contributions of the Project will generally conform to, but shall not be required to precisely follow, the following schedule and allocations:

Entity	Funding in 2022	Funding in 2023	Total Share of Estimated Project Cost	Percentage Share of Estimated Project Cost
SPIMD	\$2,650,000	\$0	\$2,650,000	43.44 %
Douglas County	\$2,960,000	\$0	\$2,960,000	48.53 %
Meridian Metropolitan District	\$490,000	\$0	\$490,000	8.03 %
Total	\$6,100,000	\$0	\$6,100,000	100.00 %

3. SPIMD Project Reimbursement Payments.

SPIMD shall deposit the entire SPIMD Contribution into an account earmarked for the Project (the “SPIMD Project Fund”). SPIMD shall reimburse the County for Actual Project Costs based on monthly draws from the SPIMD Project Fund, with SPIMD Contribution payment requests anticipated to begin in **2022** and one hundred percent (100%) of the total SPIMD Contribution anticipated to be paid out before **December 31, 2023**.

Notwithstanding the foregoing, the Parties expressly acknowledge and agree that SPIMD shall be obligated to provide the SPIMD Contribution only on a matching dollar for dollar basis to match contributions made by the County toward Actual Project Costs. In the event that the County’s contribution to Actual Project Costs does not meet or exceed the SPIMD Contribution, the SPIMD Contribution shall be reduced to an amount not to exceed the County’s contribution to Actual Project Costs.

The County shall maintain full and complete records of Actual Project Costs incurred and funds committed and expended by the each of the Project Partners for Actual Project Costs in accordance with generally accepted accounting principles. SPIMD shall have the right to audit the County’s financial records related to the Project during the Project and up to three (3) years after completion of the Project.

SPIMD shall have no obligation to commit any additional funds in excess of the SPIMD Contribution under any circumstances, including but not limited to in the event that the Actual Project Costs exceed the sum of the SPIMD Contribution and the individual funds committed by each of the Project Partners as set forth herein. This Agreement establishes SPIMD’s maximum contribution toward the completion of the Project. Any unspent portion of the SPIMD Project Fund remaining at the completion of the Project shall be retained by SPIMD.

4. Project Implementation.

The County shall facilitate the completion of the Project in accordance with all applicable laws, rules, and regulations of all governmental entities having proper jurisdiction over the Project. The Parties anticipate the Project will be substantially completed by **May 15, 2023**.

All invoices or other cost documentation requests from contractors or subcontractors related to the Project and Actual Project Costs shall be directed to the County, and the County shall distribute them together with a pay request approved by the County Representative (identified in Paragraph 10.A) to the SPIMD Representative (identified in Paragraph 10.B), as applicable. Each pay request submitted by the County Representative to the SPIMD Representative shall be accompanied by the following: (1) Project invoices or other documentation of Actual Project Costs incurred; (2) a current accounting of total Actual Project Costs and funding commitments of each of the Project Partners; and (3) such other documentation supporting or explaining the pay request as the County Representative may choose to include at its discretion or as is reasonably requested by the SPIMD Representative. The County Representative may submit pay requests to the SPIMD Representative either in hard copy or electronically (via email). Upon receipt of each pay request, the SPIMD Representative will review the same and either provide approval of the pay request or provide comments on the pay request within fifteen (15) calendar days of progress payments and thirty (30) days of the final payment. If the SPIMD Representative does not provide written comments on the pay request within said fifteen (15) calendar day review period or thirty (30) days for the final payment, then the pay request shall be deemed approved. Following approval of each pay request, SPIMD shall immediately cause funds to be disbursed from the SPIMD Project Fund to the County as requested in the pay request. As set forth above, SPIMD shall have no obligation to commit any funds in excess of the SPIMD Contribution.

The County shall keep accurate records of the progress of the Project and provide status reports to the SPIMD Representative identified in Paragraph 10.B. on a regular basis (a minimum of every month after execution of this Agreement), including progress updates, notice of any problems related to the Project, and a record of payments made to any contractor(s). Said status reports shall include updates to the Actual Project Costs expended and the remaining costs projected to be expended through the Project completion and shall note any variances (change orders) from the estimated project costs, as well as any adjustments to the time schedule for Project completion.

5. Character of SPIMD Role.

SPIMD shall have no obligation to complete the Project and no liability for or arising from the Project. SPIMD shall not be liable for any claims, demands, losses, damages, expenses, injuries, or liabilities arising from the death or injury of any person or persons, including any claims of the County or other funding entities, or from any damage to or destruction of property caused by or in connection with the Project, or any negligent act or omission of the County, its officers, employees, or agents, or any other funding entities or the Project contractor(s).

6. Good Faith and Fair Dealing.

SPIMD and the County agree that the County shall have a fiduciary duty to SPIMD in the performance of this Agreement. This fiduciary duty accepted by the County shall include, but not be limited to, the highest duties of good faith, fair dealing, disclosure of all information to SPIMD as described herein, avoidance of conflicts of interest, and avoidance of the appearance of conflicts of interest in carrying out the goals and objectives of this Agreement.

7. Insurance.

SPIMD and the County shall insure themselves separately against liability, loss, and damages arising out of the operation of and performance under this Agreement.

8. Term of Agreement and Termination.

This Agreement shall be effective as of the Effective Date identified above and shall terminate upon the completion and close out of the Project, final accounting of the Actual Project Costs being provided by the County to SPIMD, and final payment of the SPIMD Contribution by SPIMD to the County; provided that, in the absence of the prior and express written consent of SPIMD, the obligation to cause funds to be disbursed from the SPIMD Project Fund to the County shall terminate on December 31, 2022 (subject to annual appropriations in accordance with C.R.S. § 29-1-110), whether or not the Project has been completed. It is SPIMD's intent to appropriate the funds described in this Agreement. However, pursuant to C.R.S. § 29-1-110, any financial obligations of SPIMD contained herein that are payable after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted and otherwise made available on an annual basis.

Either party shall have the right to terminate this Agreement after thirty (30) days written notice to the other party in the event of a default which is not cured within twenty (20) days after delivery of the written notice of default. Termination shall not be effective if reasonable action to cure the breach has been taken by the defaulting party before the effective date of the termination, and such actions are pursued diligently to a successful completion within twenty (20) days from inception of the actions. If such actions are not successful within said period of time, the non-defaulting party shall have the right to terminate this Agreement upon written notice to the other party.

In the event of termination, the County shall settle all accounts with SPIMD related to the Project and then remit to SPIMD its pro rata share of any monies recovered from or refunded by the Project Partners or Project contractor(s), as applicable.

9. Assignment.

Neither Party shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other Party. Any attempt to assign this

Agreement in the absence of such written consent, shall be null and void *ab initio*.

10. Project Management.

A. County Representative. The County hereby designates Ben Pierce, Project Manager, with an email address of bpierce@douglas.co.us as the County's Representative to coordinate all communication with SPIMD related to the Project, including issues arising under this Agreement.

B. SPIMD Representative. SPIMD hereby designates Pat Mulhern, P.E., (with an email address of pat@mulhernmre.com) as SPIMD's Representative to coordinate all communication with the County related to the Project, including issues arising under this Agreement.

11. Notice.

Any notice, demand or other communication required or permitted to be given hereunder, except as otherwise provided herein, shall be in writing and delivered personally or sent by overnight national courier service or by overnight or registered mail, postage prepaid, return receipt requested, addressed to the Party at the address that follows or as either Party may subsequently designate from time to time in writing. Notice shall be considered given when delivered or, if mailed by registered mail, on the third day after such notice is mailed.

To SPIMD: Southeast Public Improvement Metropolitan District
c/o Mulhern MRE, Inc.
2 Inverness Drive East, Suite 200
Englewood, CO 80112

With a copy to:

Southeast Public Improvement Metropolitan District
c/o Spencer Fane LLP
Attn: Ron Fano
1700 Lincoln Street, Suite 2000
Denver, CO 80203

Douglas County: Douglas County
100 Third Street
Castle Rock, Colorado 80104
Attention: Janet Herman, Public Works Director
jherman@douglas.co.us

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

12. Miscellaneous.

A. The Parties do not intend, and nothing contained in this Agreement shall be deemed to create a partnership, co-tenancy, joint venture, or agency of any kind between the Parties.

B. Regardless of whether any Party may be in default under this Agreement, each Party shall pay its own reasonable attorney's fees and costs incurred in order to enforce its rights under this Agreement.

C. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the parties to this Agreement, the exclusive venue for dispute resolution shall be the District Court for and in Douglas County, Colorado.

D. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns. This Agreement is solely between and for the benefit of SPIMD and the County, and no consultant, contractor, any subcontractor nor any other person is a third-party beneficiary to or under this Agreement.

E. This Agreement contains the entire agreement of the Parties with respect to its subject matter. Any amendments or modifications to this Agreement must be in writing executed by the Parties in order to be valid and binding. Each Party to this Agreement represents and warrants that they have made full disclosure of any and all contingencies, conditions, or reimbursement agreements related to their financial participation in the Project as described herein.

F. 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.

G. The Parties are both political subdivisions of the State of Colorado and, as such, (1) any and all financial obligations described hereunder are subject to annual budget and appropriations requirements, and (2) no consultants, contractors or subcontractors shall have lien rights against them, nor against any property lying within their respective boundaries in the event of nonpayment of any amount due under this Agreement.

H. SPIMD and the County, and their respective elected officials, directors, officials, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights, immunities, or protections afforded by the Colorado Governmental Immunity Act, §§24-10-101 et seq., C.R.S., as the same may be amended from time to time.

I. No elected official, director, officer, agent or employee of SPIMD or the County shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

J. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year first above written.

**SOUTHEAST PUBLIC IMPROVEMENT
METROPOLITAN DISTRICT**

Walter A. Koelbel, President

ATTEST: _____

Secretary

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**BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY**

_____, Chair

ATTEST:

APPROVED AS TO CONTENT:

Kristin Randlett,
Clerk to the Board

Douglas J. DeBord,
County Manager

APPROVED AS TO FORM:

APPROVED AS TO FISCAL CONTENT:

Chris Pratt,
Senior Assistant County Attorney

Andrew Copland,
Director of Finance

EXHIBIT A
HAVANA STREET AND MERIDIAN BOULEVARD INTERSECTION IMPROVEMENT PROJECT

