

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
E-470 PUBLIC HIGHWAY AUTHORITY, AND
THE CITY OF THORNTON REGARDING THE
WASHINGTON STREET OVERPASS EXPANSION**

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE E-470 PUBLIC HIGHWAY AUTHORITY, AND THE CITY OF THORNTON REGARDING THE WASHINGTON STREET OVERPASS EXPANSION (the “Agreement”) is made and entered into this ____ day of _____, 2025 (the “Effective Date”), by and between the E-470 PUBLIC HIGHWAY AUTHORITY, a body corporate and political subdivision of the State of Colorado (the “Authority”), and the CITY OF THORNTON, a political subdivision and body corporate of the State of Colorado (the “City”) (the Authority and the City may be collectively referred to herein as the “Parties” or individually as a “Party”).

RECITALS

A. The Parties, as Colorado governmental entities, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18, and Sections 29-1-201, *et seq.*, C.R.S., to cooperate or contract via intergovernmental agreement with one another to provide functions, services, or facilities authorized to each cooperating government.

B. The Authority was created and organized pursuant to the Public Highway Authority Law, §§ 43-4-501, *et seq.*, C.R.S., for the purpose of planning, funding, constructing, operating, and/or maintaining a public highway known as the E-470 Public Highway (“E-470”).

C. The City is a municipal corporation organized and existing as a home rule city under Article XX of the Colorado Constitution and the Home Rule Charter of the City and is authorized to operate and maintain City roadways in accordance with Colorado State Law, including Section 43-2-124, C.R.S.

D. Pursuant to Article XIV, Section 18(2) of the Constitution of the State of Colorado, C.R.S., and Section 29-1-203, C.R.S., the Parties are encouraged and authorized to cooperate and contract with one another to provide any function or service lawfully authorized to each, including the sharing of costs.

E. The Parties have entered into prior agreements including the “Intergovernmental Agreement Between the City of Thornton and the E-470 Public Highway Authority Regarding the Construction of Certain Interchanges and Grade Separations That Cross the E-470 Public Highway and Associated Projects” and executed on November 21, 2000 (“Construction IGA”) and “the Intergovernmental Agreement between the City of Thornton and the E-470 Public Highway Authority For Maintenance and Operations of Certain Interchanges, Grade Separations and Thornton Infrastructure That Cross the E-470 Highway” and executed December 12, 2002 (“Maintenance IGA”).

F. Since the Construction and Maintenance IGAs were executed construction of the Washington Street overpass has been completed, but circumstances now call for the widening of that overpass to accommodate additional flows of traffic (herein “Overpass Expansion”); and

G. The Parties desire by this Agreement to (1) provide for the City to undertake design responsibilities for the Overpass Expansion in coordination with the Authority, (2) allow the City to contract for the construction of the Overpass Expansion and (3) allow the parties to provide for the ownership, operation and maintenance responsibilities for the Overpass Expansion thereafter.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby covenant and agree as follows:

AGREEMENT

1. **RECITALS.** The foregoing recitals are hereby incorporated as though fully set forth herein.

2. **OVERPASS EXPANSION DESIGN PHASE.**

A. **Thornton Design Contracts.** Thornton shall procure and administer, at its sole cost and expense, design consultant contracts acceptable to the Authority and Thornton for the design of the Overpass Expansion. Such consultants shall be selected from the Colorado Department of Transportation's approved contractors list. The Authority may participate in any public solicitation for design professionals conducted by Thornton, including reviewing and providing comments on proposals and attending proposer interviews, but shall not be responsible for costs and expenses or the selection of a consultant related to the same. Thornton shall require its Overpass design consultant(s) to be responsible for all quality management, quality control, and quality assurance in connection with the design for the Overpass.

B. **Design Plan Review Process.** The Overpass' design shall comply with federal, state, and local law, including the Colorado Department of Transportation Bridge Design Manual. The design will generally match the appearance of other Authority bridges and should create minimal impact to the E-470 Public Highway ("E-470"), the Authority, and its customers and be done to accomplish minimal disruption to the operation of E-470.

1. Thornton will provide the Authority with a design submittal schedule to assist with Authority plan review, which schedule shall be subject to the reasonable approval of the Authority (the "Design Schedule").
2. Thornton shall submit plans to the Authority according to the Design Schedule, including separate reviews for 30%, 60%, 90%, and final plans and specifications. The Authority shall have twenty-one (21) calendar days to review, comment on, accept, or reject each such submittal of plans and specifications (a "Submittal"). No response by the Authority to Thornton within twenty-one (21) calendar days of receipt of a Submittal shall be deemed by Thornton to be an acceptance of the Submittal by the Authority.

3. To the extent Thornton does not satisfy the Authority regarding the Authority's comments and objections relating to a Submittal, the Parties shall timely hold a design review meeting to seek resolution on the Authority's comments and objections.
4. Only when a final Submittal is satisfactory to the Authority shall Submittal plans and specifications be considered accepted by the Authority; however, such acceptance shall not be unreasonably withheld, conditioned, or delayed.
5. Any changes to final Submittals shall be subject to review and acceptance by the Authority.

C. Relocation of Utilities. Thornton shall be responsible for processing, at its sole cost and expense, the relocation of all utilities, including Authority owned utilities if required, to carry out the design, construction, operation, and maintenance of the Overpass. Thornton shall negotiate with such utilities, and all utility relocations shall be completed at no cost to the Authority.

D. Costs. The Authority shall have no responsibility or liability for costs of the Overpass Expansion or the design thereof in accordance with this Agreement.

3. THORNTON'S OBLIGATIONS.

A. Payment of Authority Costs. Thornton agrees to reimburse the Authority for all reasonable costs the Authority incurs for the payment of third-party consultants related to the Design Phase, including, but not limited to, design review, engineering, quality control, and geotechnical work (the "Authority Costs"). The Authority will provide Thornton with monthly invoices detailing the Authority Costs the Authority incurred in the prior month. Thornton shall reimburse the Authority for those Authority Costs within thirty (30) days of the receipt of the invoice.

B. Other Obligations. Thornton will obtain, at its sole cost and expense, all permits, approvals, and sign-offs from all entities, public and private, necessary to complete the final Overpass design. Thornton will respond in a reasonable time to the Authority's requests for documents and records related to the Project to allow the Authority to exercise its rights under this Agreement. Thornton and all of its contractors and consultants shall pay E-470 tolls.

4. CONSTRUCTION, OWNERSHIP, OPERATIONS AND MAINTENANCE.

A. Construction. Upon the completion and approval by the Authority and Thornton of the final Overpass Expansion design, the Parties' contemplate that Thornton will be responsible for undertaking all work in the Overpass Expansion Construction

Phase, including the funding and administration thereof. The Parties agree to enter into an intergovernmental agreement to address the Parties' respective obligations in the Overpass Expansion Construction Phase (the "OECP IGA") prior to either Party undertaking any activities related thereto.

B. Ownership, Operations, and Maintenance. The Parties anticipate that Thornton will dedicate the Overpass Expansion to the Authority upon completion and final acceptance thereof, after which time the Authority will operate and maintain the bridge structure and Thornton will operate and maintain the asphalt road surface and bridge rail. The Parties agree that the terms of the Maintenance IGA regarding ownership, operations, and maintenance obligations shall apply to the Overpass Expansion once construction thereof is complete.

C. Reimbursement. The Authority shall have no obligation, pursuant to this Agreement or otherwise, to reimburse Thornton or any other person or entity for funds contributed to the Overpass Expansion and expended in accordance with this Agreement. Thornton acknowledges that it has no right to reimbursement from the Authority for funds contributed and expended in accordance with this Agreement.

D. Dispute Resolution. Non-binding resolution of disputes or disagreements on any matter relating to this Agreement shall be subject to the following process:

- i. Upon written notification of either Party to the other that a dispute exists, the matter shall be submitted jointly to the Authority's Chief Engineer and the Thornton Director of Public Works. Both Parties shall collaborate to resolve the issue.
- ii. If a resolution cannot be achieved within a reasonable time, the matter shall be submitted jointly to the Authority's Executive Director and Thornton's City Manager. Both Parties shall collaborate to resolve the issue.
- iii. The Parties agree that participation in each of these administrative procedures shall be a condition precedent to the institution of litigation.

5. **INSURANCE.** The City shall require that contractor(s) performing work for the Overpass Expansion obtain and maintain insurance in accordance with the Authority's Permit Manual.

6. **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 any 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.

7. **TERM OF AGREEMENT AND TERMINATION.** Unless terminated pursuant to specific provisions contained herein, this Agreement shall be effective as of the Effective Date identified above and shall terminate upon the final completion of the Overpass Expansion.

8. **MISCELLANEOUS.**

A. **Assignment.** None of the Parties hereto may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void ab initio.

B. **Time is of the Essence.** The Parties acknowledge that time is of the essence in the performance of this Agreement.

C. **No Partnership or Agency.** Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the Parties shall not be deemed or constitute partners, joint venture participants, or agents of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the others.

D. **No Third-Party Beneficiaries.** It is expressly understood and agreed that 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. It is the express intention of the Parties that any person or entity other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.

E. **Governmental Immunity.** Nothing in this Agreement or in any actions taken by the Parties or their respective elected officials, directors, officers, agents and employees pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

F. **No Personal Liability.** No elected official, director, officer, agent or employee of the Parties 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.

G. **Annual Appropriations.** The Parties are political subdivisions of the State of Colorado and, as such, any and all financial obligations described hereunder are subject to annual budget and appropriations requirements of applicable law.

H. **Notices.** Any notices or other communications required or permitted by this Contract 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:

- (a) personally delivered to the party to whom it is addressed;

- (b) sent by electronic mail to the individual designated to receive notice at the e-mail address below, provided that (1) the message includes a cross-reference to this Section of the Contract and states that it serves as notice pursuant to this Contract, and (2) notice is also provided in a timely manner by another method of physical delivery provided for in this Section;
- (c) sent by United States certified mail, postage prepaid, return receipt requested (“US Mail”); or
- (d) placed in the custody of a nationally recognized overnight carrier for next day delivery (“Carrier”).

Such notice will be deemed given (i) when received, if delivered personally; (ii) if sent by electronic mail and physical delivery in accordance with (b) above, when the sender receives a “delivery receipt” or other response confirming delivery of such electronic mail; (iii) 4 days after deposit, if sent by US Mail; or (iv) the next business day after deposited with a Carrier during business hours on a business day.

All notices shall be delivered to the following addresses, or such other address as is provided by one party to the other in accordance with this Section:

If to the Authority:

E-470 Public Highway Authority
Attn: Executive Director
Administrative Headquarters Facility
22470 E. Stephen D Hogan Parkway
Aurora, CO 80018
Email: jdonahue@e470.com

With a copy to:

E-470 Public Highway Authority
c/o Icenogle Seaver Pogue
Attn: Tamara K. Seaver
4725 South Monaco Street, Suite 360
Denver, CO 80237
Email: tseaver@isp-law.com

If to the City:

City of Thornton
9500 Civic Center Dr.
Thornton, CO 80229
Attention: City Manager
Email: citymanager@thorntonco.gov

With a copy to:

City of Thornton
9500 Civic Center Dr.
Thornton, CO 80229

Attention: City Attorney
Email: attorney@thorntonco.gov

A Party may change its address for the purpose of this Section by giving written notice of such change to the other Parties in the manner provided in this Section.

I. Rules of Construction. For purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise (i) the terms defined herein include the plural as well as the singular and include any words based upon the root of such defined terms; (ii) words importing gender include all genders; (iii) the words “include,” “includes,” and “including” mean inclusion without limitation; (iv) the word “or” is not exclusive; (v) the words “herein,” “hereof,” and “hereunder,” and other words of similar import, refer to this Agreement as a whole and not to any particular Section or other subdivision; and (vi) the headings in the Agreement are for convenience only and shall not affect the interpretation of this Agreement. Unless the context otherwise requires, reference herein to: (A) Sections refer to the Sections of this Agreement, as applicable; (B) an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (C) a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulation promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

J. Choice of Law. This Agreement, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, shall be governed by, and enforced in accordance with, the substantive and procedural laws of the State of Colorado, including its statutes of limitations, without giving effect to any choice of law or conflict of laws rules or provisions (whether of the State of Colorado or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Colorado.

K. Venue and Jurisdiction. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against any other party in any way arising from or relating to this Agreement and all contemplated transactions, in any forum other than the Eighteenth Judicial District of Colorado, which forum shall have sole and exclusive jurisdiction over any matters related to this Agreement.

L. 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.

M. Binding Contract. This Agreement shall inure to and be binding on the successors and permitted assigns of the Parties.

N. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement signed by authorized representatives of the Parties.

O. Severability. If any term or provision of this Agreement is determined by the Eighteenth Judicial District of Colorado or any appellate court with competent jurisdiction to be invalid, illegal, or unenforceable under the laws governing this Agreement, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement; provided, however, that if any term or provision of this Agreement which is material to allowing the parties to achieve the benefit of the bargain originally negotiated between the parties is determined by the Eighteenth Judicial District of Colorado or any appellate court with competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable.

P. Counterpart Execution. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

IN WITNESS WHEREOF, the Parties hereto 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.

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E-470 PUBLIC HIGHWAY AUTHORITY



Joe Donato, Executive Director

DEPARTMENT APPROVAL:



Chief Engineer

FINANCE APPROVAL:



Chief Financial Officer

APPROVED AS TO FORM:
ICENOGL SEAVER POGUE
A Professional Corporation



General Counsel

DATE APPROVED BY THE BOARD OF DIRECTORS: 4/10/25

CITY OF THORNTON, COLORADO, a Colorado home rule municipality

Tansy Hayward, City Manager

ATTEST:

Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:

Tami Yellico, City Attorney