

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE E-470 PUBLIC HIGHWAY AUTHORITY,
CITY OF BRIGHTON, AND ADAMS COUNTY, COLORADO
REGARDING E-470 AND SABLE BOULEVARD INTERCHANGE FUNDING AND
CONSTRUCTION**

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN THE E-470 PUBLIC HIGHWAY AUTHORITY, THE CITY OF BRIGHTON, AND ADAMS COUNTY COLORADO REGARDING E-470 AND SABLE BOULEVARD INTERCHANGE FUNDING AND CONSTRUCTION is made and entered into this ____ day of _____, 2022 (the “Effective Date”), by and between the E-470 PUBLIC HIGHWAY AUTHORITY, a body corporate and political subdivision of the State of Colorado; the CITY OF BRIGHTON, a Colorado home rule municipality; and ADAMS COUNTY, COLORADO, a body corporate and politic of the State of Colorado.

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 Parties and their residents, customers, and general public will jointly benefit from the construction of an interchange and related equipment and appurtenances necessary thereto to be located at the intersection of the E-470 and Sable Boulevard.

C. In connection with the Interchange construction, the City desires to widen the Sable Boulevard bridge over E-470 to accommodate additional lanes and pedestrian facilities.

D. The Parties and their respective residents, constituents, and customers will jointly benefit from the accelerated construction of the Interchange, and the Parties therefore agree to cooperatively provide for the design and construction of the Interchange as provided herein.

E. Following completion of the construction of the Interchange, and pursuant to the terms and conditions of later Maintenance IGA(s), it is anticipated that the Authority will assume the Authority Maintenance Obligations for the Interchange, excluding Sable Boulevard as widened, and the City shall have the full and sole obligation with respect to all the Connecting Facilities for ownership, operation, maintenance, repair, and replacement thereof.

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. **DEFINITIONS.** In addition to the terms defined within the text of the Agreement, the below terms shall have the following meanings:

<i>Adams County Trail</i>	The existing trail at the Adams County Government complex, located at 4430 S. Adams County Parkway, Brighton, CO. The County will continue to own and maintain the trail after it is relocated to accommodate the new Interchange.
<i>Agreement</i>	This Intergovernmental Agreement between the Authority, City, and County Regarding E-470 and Sable Boulevard Interchange Funding and Construction.
<i>Authority</i>	E-470 Public Highway Authority.
<i>Authority Maintenance Obligations</i>	Subject to completion of the Interchange, the Authority will own and be responsible for maintaining the following standard components of the Interchange as set forth in the Maintenance IGA(s): approach slabs, bridge railing, under deck lighting, abutment wall lighting, bridge substructure and superstructure, on and off ramp pavement, signage on the ramps, ramp pavement marking, fencing, Tolling System, and all other ramp lighting for E-470. The Authority shall NOT own nor be responsible for maintaining the two-inch (2”) pavement surface on the deck of the Bridge (including any pavement markings and pedestrian facilities) or any enhanced aesthetic features of the Bridge or any Connecting Facilities.
<i>Bridge</i>	All Interchange infrastructure directly associated with the widened bridge conveying traffic (including pedestrian traffic) on Sable Boulevard over E-470, comprising, but not limited to, the following: all substructure, superstructure, abutments, approach slabs, safety approach slabs, safety approach rails, and any related infrastructure, the design and construction of which shall be the responsibility of the Authority as set forth in this Agreement.
<i>City</i>	The City of Brighton, Colorado.
<i>Connecting Facilities</i>	Any and all transportation infrastructure connected to, but not part of, the Interchange, including but not limited to local roads, frontage roads, Sable Boulevard to the north of the north intersection with E-470 and to the south of the south intersection with E-470 within the limits delineated by the end of the curb returns where they meet the cross street.
<i>Contribution</i>	Individually, either the Authority Contribution, City Contribution, or County Contribution.

<i>County</i>	Adams County, Colorado.
<i>E-470</i>	The E-470 Public Highway.
<i>Effective Date</i>	As defined in the introductory paragraph of the Agreement.
<i>Excluded Costs</i>	The following costs shall not constitute Interchange Costs, shall not be paid by the Authority and, accordingly, shall NOT be eligible for payment from the Authority Contribution: (a) real property acquisition (other than Interchange Property Acquisition Costs); and (b) the Connecting Facilities (including any design, construction, and maintenance thereof).
<i>Final Interchange Design</i>	The design for the Interchange to be contracted for by the Authority with coordination from the City and County as set forth in this Agreement.
<i>Interchange</i>	A full diamond interchange at E-470 and Sable Boulevard, excluding all Connecting Facilities, and comprising only the following elements of infrastructure: (a) ramps in all directions including the ramp intersections to the point to the curb returns where they meet the cross-street; (b) the length of Sable Boulevard between the outermost curb radii of the north and south ramp intersections; (c) the Bridge widened to accommodate the ultimate four lane arterial section and pedestrian facilities; (d) signals and lights at the intersection(s) with Sable Boulevard; (e) the Authority's Tolling System Installation; (f) connections to and relocations of the Adams County Trail; and (g) the relocation of existing utilities and irrigation facilities in connection therewith. The Interchange is depicted generally in Exhibit A attached to this Agreement.
<i>Interchange Costs</i>	The actual costs incurred by the Parties to design and construct the Interchange based on the completed Final Interchange Design, which shall include the following: (a) costs incurred pursuant to the Relocation Contract and Construction Contract (as defined in Section 5(A)(i)), plus; (b) all costs paid, or to be paid, to third parties for design, engineering, construction management, quality assurance, surveying and identification of property rights, utility investigation, quality control, independent cost estimating, design support during construction, and geotechnical work, plus; (c) permitting and administrative review fees, including inspections and testing and any necessary environmental compliance, remediation, and related cost, plus; (d) the Interchange Property Acquisition Costs, Utility Relocation Costs, Irrigation System Relocation Costs, and Trail Relocation Costs, if any; and (e) Tolling System Installation costs; provided, however,

	Interchange Costs shall not include any Excluded Costs.
<i>Interchange Funds Account</i>	A segregated account of the Authority into which funding of the City and County Contribution shall be deposited following the transfer of such funds to the Authority by the City and County and then held by the Authority and used for the limited purposes of funding the Interchange Costs.
<i>Interchange Property</i>	Such real property rights or interests as are deemed necessary by the Authority to complete the Interchange per the Final Interchange Design inclusive of (a) property needed by the Authority in fee title for a 75-foot strip on either side of E-470 right-of-way to provide locations for slopes, drainage, detention and retention facilities, trails, and utilities; and (b) property necessary to accommodate stormwater facilities and improvements associated with the Interchange, but excluding any and all real property already owned by the Authority.
<i>Interchange Property Acquisition Costs</i>	The actual costs of acquiring Interchange Property from a third party.
<i>Irrigation System Relocation Costs</i>	The actual costs incurred in connection with relocating irrigation systems as necessary to complete the Interchange in accordance with the Final Interchange Design.
<i>Maintenance IGA(s)</i>	One or more intergovernmental agreements to be entered into between the Parties and other entities as appropriate that address the terms and conditions of ownership and maintenance of the Interchange as set forth in Section 8 hereof.
<i>Parties</i>	Collectively, the Authority, City, and County.
<i>Party</i>	Individually, either the Authority, City, or County.
<i>Trail Relocation Costs</i>	The actual costs incurred in connection with the relocation of the Adams County Trail as necessary to complete the Interchange in accordance with the Final Interchange Design.
<i>Tolling System</i>	The entire tolling system within the Interchange, which shall include, but is not limited to, fiber optic connections, new antennae, cameras, traffic loops, tolling hardware, and tolling software. The Authority shall be the sole owner and operator of the Tolling System.
<i>Tolling System Installation</i>	The installation and integration of the Tolling System.
<i>Utility Relocation Costs</i>	The actual costs incurred in connection with relocating utilities as necessary to complete the Interchange in accordance with the Final Interchange Design, including, but not limited to costs incurred by the Authority in connection with the Relocation Contract (if any), costs incurred by the City of Aurora for design and relocation

	of such utilities if the City of Aurora elects to undertake a relocation itself, and costs of any real property acquisitions necessary to effect the relocation.
--	--

3. **GENERAL INTERCHANGE PROJECT RESPONSIBILITIES.**

A. **General.** The Parties understand and agree that, subject to the City and County's transfer of funds equal to the City and County Contribution to the Authority, the Authority, with coordination and cooperation from the City and County, will contract for the design and construction of the Interchange.

B. **Interchange Costs Component Responsibilities.**

(i) *Interchange Property Acquisition Costs.* In the event it is necessary to acquire Interchange Property to complete the Interchange, the City agrees it will (a) obtain or acquire the necessary property interests in the Interchange Property, which shall be deeded to the Authority; and (b) pay the Interchange Property Acquisition Costs, as applicable (which amounts may be credited to the City Contribution in accordance with Section 6(C)(ii)). If Interchange Property needs to be acquired through the use of eminent domain proceedings, the City and Authority agree to coordinate as necessary to institute and carry out such proceedings, with the City to fund the same.

(ii) *Utility Relocation Costs.* In the event it is necessary for any utility facilities to be relocated in order to construct the Interchange in accordance with the Final Interchange Design (including, but not limited to, City of Aurora utility facilities as contemplated in Sections 5 and 6), all such Utility Relocation Costs shall be included within the Interchange Costs. The Authority will be responsible to pursue any necessary utility relocation permissions; however, the City agrees to aid and support the Authority in its discussions and negotiations with any applicable utility owners as necessary or appropriate.

(iii) *Irrigation System Relocation Costs.* In the event it is necessary for any irrigation system facilities to be relocated in order to construct the Interchange in accordance with the Final Interchange Design, all such Irrigation System Relocation Costs shall be included within the Interchange Costs. The Authority will be responsible to pursue any necessary irrigation system relocation permissions; however, the City agrees to aid and support the Authority in its discussions and negotiations with any applicable irrigation system facility owners as necessary or appropriate.

(iv) *Trail Relocation Costs.* In the event it is necessary for the Adams County Trail to be relocated in order to construct the Interchange in accordance with the Final Interchange Design, all such Trail Relocation Costs shall be included within the Interchange Costs.

(v) *Identification of Interchange Costs.* The Interchange Property Acquisition Costs, Utility Relocation Costs, Irrigation System Relocation Costs, and Trail Relocation Costs, if any, shall be separately identified and accounted for, as appropriate, and the Parties shall be obligated to fund these Interchange Costs as set forth in Section 6(B).

C. Reasonable Efforts. The Parties agree that they shall, in good faith, use commercially reasonable efforts in carrying out their obligations under this Agreement, including but not limited to in the design, construction, and negotiation with third parties necessary to complete the Interchange, and to minimize all Interchange Costs to be incurred by the Parties associated with the completion of the Interchange.

D. Other Necessary Property. The City and Authority will, at no cost to the other Parties, obtain and make available for the Interchange such real property rights or interests owned by the City or Authority as are deemed necessary by the Authority to complete the Interchange per the Final Interchange Design. The County shall convey a portion of its adjacent Government Center property for the Interchange as set forth in the Final Interchange Design. The County will also grant the Authority a temporary construction easement for relocation of the Adams County Trail as set forth in the Final Interchange Design prior to construction beginning thereon, which trail will be constructed on County property for continued County ownership and maintenance. The Parties acknowledge that the County intends to further develop its Government Center property in the future, and the Parties will work to address the location of the Interchange in relation to the future Government Center construction during development of the Final Interchange Design to avoid interference therewith.

E. Fees. The Parties agree to waive any and all fees associated with the Interchange that may be waived pursuant to applicable rules and regulations, including, but not limited to any Party's applicable review fees, and will not include any such fees in the Interchange Costs.

F. Coordination. The City and County agree to coordinate and assist the Authority as desired with respect to the acquisition of permits and any public meetings or input related thereto as requested. The City and County also agree to coordinate with the Authority with respect to any utility, irrigation system facility, or trail relocations and any necessary approvals related thereto.

4. INTERCHANGE DESIGN.

A. Completion of Final Interchange Design. The Authority shall complete the Final Interchange Design in accordance the following terms and conditions:

(i) *Design Review.* The City and County shall each be afforded the opportunity to review the Interchange design during the Authority's development of the Final Interchange Design at the thirty percent (30%), sixty percent (60%), and ninety percent (90%) stages of completion and upon full completion of the

Final Interchange Design. The City and County shall have fifteen (15) days from the date the review is provided to them by the Authority to review the development of the Final Interchange Design and to offer comments. The Authority will give reasonable consideration and will in good faith attempt to accommodate all reasonable comments from the City and County but will retain full and final approval authority over the Final Interchange Design.

(ii) *Material Redesign.* In the event material redesign of the Final Interchange Design becomes necessary after construction of the Interchange has begun, the Authority shall notify the City and County of the material redesign necessity, and the City and County shall be afforded a ten (10) day review and comment period. The Authority will give reasonable consideration and will in good faith attempt to accommodate all reasonable comments from the City and County but will retain full and final approval authority over material redesign of the Final Interchange Design. For the purposes of this provision, material redesign shall comprise significant changes in the approved Final Interchange Design which either: (a) change the Interchange footprint, or (b) change the Interchange configuration (including configuration of tolling points). Material redesign shall not include changes which merely accommodate field conditions, sub-surface soils, or topography.

B. Communication. The Authority shall keep accurate records of the progress of the Interchange and shall provide status reports to the City and County, or their designees, on a regular basis (a minimum of every quarter after execution of this Agreement), including progress updates and notice of any problems related to the Interchange. Said status reports shall also include updates to the Interchange Costs expended and the remaining Interchange Costs projected to be expended through completion of the Interchange as well as any adjustments to the time schedule for Interchange completion.

5. INTERCHANGE CONSTRUCTION.

A. Authority's Obligations. The Authority agrees it shall contract to complete the Interchange construction, subject to the provisions set forth below:

(i) The Authority will solicit construction bids for (1) relocation of any Aurora water utility facilities necessary to carry out the Interchange construction if the City of Aurora requests the Authority perform such relocation in lieu of the City of Aurora undertaking utility relocation design and construction as described in Section 6(C)(i) (the "Relocation Contract"); and (2) construction of the Final Interchange Design (the "Construction Contract," and together with the Relocation Contract, the "Interchange Contracts"), which the Authority may conduct on a design-bid-build, design-build, or CM/GC basis as determined by the Authority. Once the Authority has, using the Authority's preferred contracting methodology, selected a contractor for the Relocation Contract (if applicable) and Construction Contract, respectively, the Authority will notify the City and County in writing of its intent to award the Relocation Contract or Interchange Contract, as applicable

(each a “Notice of Intent”).

(ii) The Authority will not award either the of the Interchange Contracts, nor commence construction of the Interchange, unless the City and County have transferred to the Authority funds in the amount of the Initial Contribution and Second Contribution in the timeframes set forth in Section 6(C)(i) below.

(iii) The Authority shall have full authority to issue change orders to either the Relocation Contract or Interchange Contract without consulting the City or County up to a contingency amount of fifteen percent (15%) of the total Relocation Contract or Interchange Contract, as applicable. If the actual Interchange Costs will exceed this fifteen percent (15%) contingency for either of the Interchange Contracts issued by the Authority, then any such change orders shall be approved by the Authority, City, and County. Upon the issuance of any change order to either of the Interchange Contracts issued by the Authority, the Authority will provide notice and detail with respect to the change order to the City and County to allow the City and County to coordinate any requisite modifications to the Connecting Facilities. If the City of Aurora elects to undertake design and construction to relocate any of its own utility facilities (rather than having the Authority issue the Relocation Contract), all costs incurred by the Parties or otherwise due to the City of Aurora in connection with the City of Aurora’s relocation constitute Utility Relocation Costs payable by the Parties in accordance with Section 6 hereof.

(iv) The Authority shall oversee construction of the Interchange in compliance with all applicable local, state, and federal laws, rules, and regulations. The Authority shall have no responsibility for the design or construction of the Connecting Facilities.

B. Anticipated Completion of Interchange. The Parties currently anticipate Interchange construction may be complete by approximately December 31, 2025; however, no failure by the Authority to complete the Interchange by the foregoing date shall constitute a breach of this Agreement.

6. INTERCHANGE FUNDING.

A. General. As provided and allocated in this Section 6, the City, County, and Authority agree to pay the total amount of the Interchange Costs. The total Interchange Costs are currently estimated to be approximately Thirty-Three Million Dollars (\$33,000,000) as set forth in **Exhibit B** attached hereto, based on current estimates for consultants, materials, and contingency. The Parties understand and agree that due to the long-term nature and unpredictability of the Interchange project as well as recently inflationary trends, this is only an estimate and not intended to, and shall not, serve as a not-to-exceed amount. The Parties acknowledge that the Interchange Costs may increase depending on the timing of completion of the Interchange construction, including but not limited to inflation of costs of materials or real property and other factors related thereto. The Parties will share in the incurrence of any Interchange Costs overruns or savings as set

forth in Section 6(C)(iii) below.

B. Party Contributions.

(i) *City & County Contribution.* The City and County collectively agree to contribute an amount equivalent to Thirty-Three and One-Third Percent (33.33%) of the total amount of the Interchange Costs (the “City and County Contribution”). As between themselves, City and County shall each be responsible for one-half of their combined one-third share of the Interchange Costs (respectively, the “City Contribution” and “County Contribution”). However, County’s total obligation under this Agreement shall not exceed seven million dollars. In the event the City and County Contribution exceeds fourteen million dollars, City shall be solely responsible for any City and County Contribution exceeding fourteen million dollars.

(ii) *Authority Contribution.* The Authority agrees to contribute an amount equivalent to Sixty-Six and Two-Thirds Percent (66.67%) of the total amount of the Interchange Costs (the “Authority Contribution”).

C. Funding Process.

(i) *Phased Funding.*

(a) *Initial Contribution.* The City and County will make an initial contribution of funds to the Authority in the amount of Three Million Three Hundred Thousand Dollars (\$3,300,000) to be deposited into the Interchange Funds Account within thirty (30) days of the Authority’s Notice of Intent to issue the Relocation Contract in accordance with Section 5(A)(i) (the “Initial Contribution”). In the event Aurora elects to relocate its own water facilities rather than have the Authority issue the Relocation Contract, the Initial Contribution shall become due to the Authority within thirty (30) days of the Authority providing notice of the same to the City and County (the “Aurora Construction Notice”).

(b) *Second Contribution.* The City and County will make a second contribution of funds to the Authority in the amount of Three Million Three Hundred Thousand Dollars (\$3,300,000) to be deposited into the Interchange Funds Account no later than one (1) year from the date of the Relocation Contract Notice of Intent or Aurora Construction Notice, as applicable (the “Second Contribution”).

The funds may be transferred in any manner mutually agreeable to the Parties. Once the City and County have transferred to the Authority funds in the amount of the Initial Contribution and Second Contribution and the Authority has deposited such funds into the Interchange Funds Account, the Authority can then make disbursements to fund design and construction of the Interchange, Interchange Property Acquisition Costs, Utility Relocation Costs, Irrigation System

Relocation Costs, and Trail Relocation Costs, if any, from the Interchange Funds Account.

(c) Final Contribution. The City and County will make a third and final contribution of funds to the Authority in accordance with Section 6(C)(iii) below.

(ii) *Interchange Property Credits.*

(a) If the City or Authority incur Interchange Property Acquisition Costs, the actual amount paid for such Interchange Property shall count toward the City Contribution or Authority Contribution, as applicable. By way of example, if the City incurs Interchange Property Acquisition Costs in the amount of \$25,000, the City may count that \$25,000 toward and included within the City Contribution and shall be deducted from the City's Final Contribution accordingly. To be eligible to apply Interchange Property Acquisition Costs toward the respective Party's Contribution, the Party funding the Interchange Property Acquisition Costs must provide the other Parties such evidence of the amount of the Interchange Property Acquisition Costs incurred and the payment thereof as the other Parties may reasonably request.

(b) In the event Interchange Property is dedicated to the City or Authority at no cost or for a nominal value, the City or Authority may obtain an appraisal of such Interchange Property at its own cost and expense, and the appraised amount of the subject Interchange Property shall count toward (and be included within) the City's Contribution or Authority Contribution, as applicable, subject to Sections 6(C)(ii)(b)(1) & (2) below ("Interchange Dedication Credits") and shall be deducted from the Party's Final Contribution accordingly.

(1) In the event another Party disputes the appraised amount of any dedicated Interchange Property, any other Party may elect to obtain its own appraisal therefor at its cost and expense. If more than one appraisal is obtained, the average of the appraised amounts of the subject Interchange Property shall count toward the paying Party's Contribution.

(2) Copies of all appraisals to be utilized to determine the amount of Interchange Dedication Credits shall be provided to each Party hereto.

(c) If Interchange Property needs to be obtained through the use of eminent domain proceedings, the City's actual cost for the payment of the Interchange Property shall qualify as an Interchange Property Acquisition Cost, which may be credited to the City Contribution.

(iii) *Final Accounting.* Following the Authority’s final acceptance of the Interchange in accordance with the Construction Contract, the Authority, City, and County will conduct a final accounting of all Interchange Costs (the “Final Interchange Costs”). The Final Interchange Costs shall be divided pro rata based on the City and County Contribution, subject to the County’s seven million dollar cap, and Authority Contribution (including any credits thereto for Interchange Property Acquisition Costs and Interchange Dedication Credits).

(a) If the City’s and County’s portion of the Final Interchange Costs exceeds the amount paid to the Authority in the combined Initial Contribution and Second Contribution, the City and County shall be responsible to pay the Authority their pro rata share, subject to the County’s seven million dollar cap, of any additional Interchange Costs within thirty (30) days of receipt of the Final Interchange Costs invoice (the “Final Contribution”). By way of example, if the Final Interchange Costs amount to \$33,000,000, the Parties’ responsibilities shall be as follows:

Authority Contribution: \$22,001,100 (66.67% of Interchange Costs)

City & County Contribution: \$10,998,900 (33.33% of Interchange Costs) as follows:

Initial Contribution:	\$3,300,000
Second Contribution:	\$3,300,000
Final Contribution:	\$4,398,900

D. Use of Funds and Accounting.

(i) The Authority agrees all funds transferred to the Authority by the City and County pursuant to this Agreement shall only be used for the limited purpose of funding Interchange Costs.

(ii) The Authority shall, as requested by the City or County, on a quarterly basis, provide to the City and County a detailed accounting of expenditures made by the Authority within the previous three (3) month period, which accounting shall include: (1) invoices or other documentation of the costs incurred, including but not limited to documentation of requests and invoices from consultants/contractors or subcontractors related to the design and construction of the Interchange; (2) a current accounting of the total amount of the Interchange Costs expended to date; (3) an estimate of the remaining Interchange Costs expected to be incurred; (4) costs associated with the Interchange Property Acquisition Costs, Utility Relocation Costs, Irrigation System Relocation Costs, and Trail Relocation Costs, if any; and (5) such other documentation reasonably requested by the City or County.

7. CONNECTING FACILITIES.

A. The Parties acknowledge and agree that the completion of the Interchange will create the need for Connecting Facilities and the Authority shall not be obligated to design, fund, construct, own, nor maintain any Connecting Facilities.

B. The Authority shall be entitled to review and approve in writing such portions of the designs for the Connecting Facilities that impact E-470 to ensure the Connecting Facilities do not impede the Authority's ability to operate and maintain E-470 and the Interchange. The Authority shall have a period of fifteen (15) days from receipt of the designs for those portions of the Connecting Facilities that impact E-470 to provide comment for incorporation into the specific designs.

C. The City agrees that it will assume or otherwise ensure, at its sole cost and expense, all maintenance of the Connecting Facilities.

8. COMPLETION OF IMPROVEMENTS; OWNERSHIP AND MAINTENANCE.

A. The Parties will enter into Maintenance IGA(s) that more specifically outline the Parties' respective Interchange maintenance obligations as follows: (1) the Authority's responsibility to carry out the Authority Maintenance Obligations (including the Authority's infrastructure ownership); (2) the City's ownership and maintenance of traffic signalization devices, lighting and signage not otherwise owned by the Authority, and related equipment for the Interchange not otherwise owned by the Authority; (3) the City's ownership and maintenance of (a) the two inch (2") pavement surface and any pedestrian facilities on the deck of the Bridge (including responsibility for snow removal thereon), and (b) any enhanced aesthetic features of the Bridge; and (4) the City's ownership and maintenance of all Connecting Facilities.

B. The Parties understand and acknowledge the public safety need to delineate maintenance responsibilities for the Interchange as set forth in Section 8(A) prior to the Authority granting final acceptance therefor and the Interchange opening to the public. The Parties therefore agree to negotiate the Maintenance IGA(s) upon completion of the Final Interchange Design and execute the same no later than the Authority's award of the Construction Contract, which shall be a condition to the Authority's execution of the Construction Contract.

C. Nothing herein shall be construed as granting any of the Parties or any other entities any rights in property the Parties' respectively own or have any real property interests in, including, but not limited to property that is within or adjacent to the Interchange, except as otherwise granted herein.

D. To the extent not already owned by the County, the real property underlying the relocated Adams County Trail will be conveyed to the County as the owner and operator of the Adams County Trail. The County will continue to maintain the Adams County Trail in accordance with such standards as the County adopts for similar recreational trails in the County's trail system.

9. **INSURANCE.** The Authority shall require that contractor(s) performing work for the Interchange obtain and maintain insurance in customary industry amounts satisfactory to the Authority. City and County shall be named as additional insureds on said policy(ies). Contractor(s) shall indemnify City and County for any claims made by third parties against City and/or County as a result of the negligent acts or omissions of contractor, its employees, agents, or subcontractors. The foregoing insurance and indemnification requirements shall be set forth in any agreements between the Authority and contractor(s) performing work on the Interchange.

10. **CHARACTER OF CITY & COUNTY ROLES.** The City and County shall not be liable to the Authority 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 Authority or other funding entities, or from any damage to or destruction of property caused by the negligent acts or omissions of the Authority, its employees, agents, or contractors pursuant to this Agreement including but not limited to the Authority's planning, design, and construction of the Interchange. This provision does not in any way exculpate the City or County, respectively, from claims, demands, losses, damages, expenses, injuries, liability, or damage or destruction of property caused by the negligent act or omission of the City or County, their employees or agents, pursuant to this Agreement.

11. **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.

12. **TERM OF AGREEMENT AND TERMINATION.** This Agreement shall be effective as of the Effective Date identified above and shall terminate upon the final completion of the Interchange and payment by the City and County of the Final Contribution in accordance with Section 6(C)(iii).

13. **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 Agreement or by law to be served on, given to, or delivered to any Party hereto, by another 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 Agreement and states that it serves as notice pursuant to this Agreement, 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 City:

City of Brighton
Attn: City Manager
500 S. 4th Avenue
Brighton, CO 80601

With a copy to:
City of Brighton
Attn: City Attorney
500 S. 4th Avenue
Brighton, CO 80601

If to the County:

Adams County Manager
4430 S. Adams County Parkway
Brighton, CO 80601

Adams County Attorney's Office
4430 S. Adams County Parkway
Brighton, CO 80601
dedelstein@adcogov.org

If to the Authority:

E-470 Public Highway Authority
Attention: Executive Director
Administrative Headquarters Facility
22470 E. 6th Parkway
Aurora, CO 80018
bmemory@e-470.com

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

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 and orders refer to the Sections of this Agreement and orders made pursuant to 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 District Court in and for Adams County, 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 District Court in and for Adams County, 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 District Court in and for Adams County, Colorado or any appellate court with competent jurisdiction to be invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable.

P. Covenant of Good Faith and Fair Dealing. The Parties agree to act in good faith in dealing with one another, carrying out their responsibilities, and performing their obligations pursuant to this Agreement. Each Party hereby covenants to the other that it shall not undermine the rights or obligations of the other Party hereto with respect to the Agreement, and it will cooperate with the other in achieving the purposes of this Agreement.

Q. 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.

[remainder of page intentionally left blank]

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.

E-470 PUBLIC HIGHWAY AUTHORITY

By: Beau Memory
Its: Executive Director

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022 by Beau Memory as Executive Director of the E-470 Public Highway Authority.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

DEPARTMENT APPROVAL:

Director of Engineering and Roadway Maintenance

FINANCE APPROVAL:

Director of Finance

APPROVED AS TO FORM:
ICENOGLE SEAVER POGUE
A Professional Corporation

General Counsel

DATE APPROVED BY THE BOARD OF DIRECTORS: _____

/s/

Title: _____

Notary Public

_____ , _____

/s/

Title: _____

My commission expires: _____

_____ , _____

EXHIBIT A
INTERCHANGE

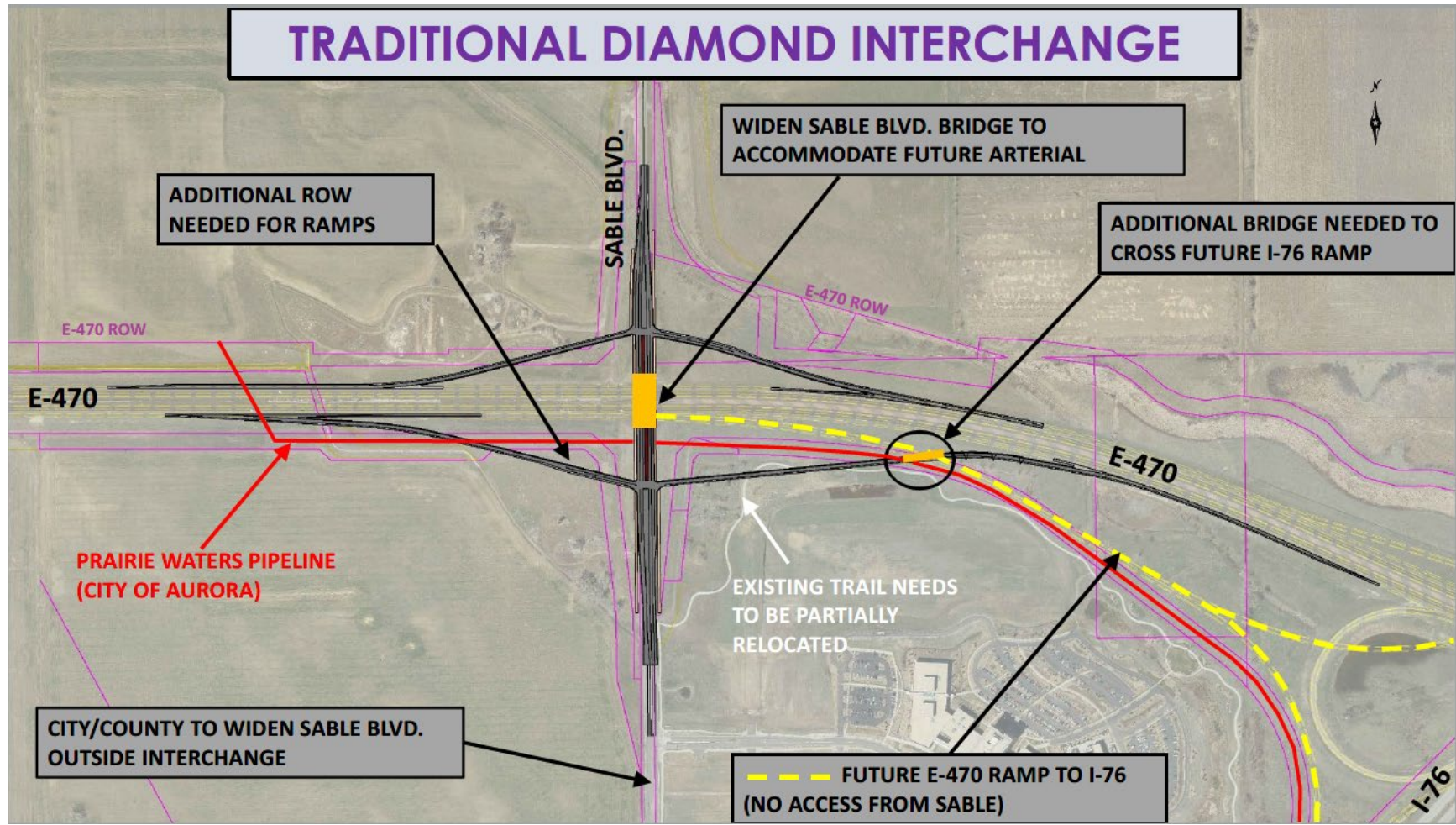


EXHIBIT B
E-470/SABLE BOULEVARD INTERCHANGE ESTIMATE (DEC. 2020)

1. Design Consultant	\$1,700,000
2. Property Acquisition	\$2,200,000
3. Construction	\$22,500,000
4. Construction Management	\$1,600,000
5. <u>Contingency</u>	<u>\$5,000,000</u>
TOTAL =	\$33,000,000