

**THIRD AMENDED AND RESTATED
ESTABLISHING CONTRACT
FOR THE
E-470 PUBLIC HIGHWAY AUTHORITY**

THIS THIRD AMENDED AND RESTATED ESTABLISHING CONTRACT FOR THE E-470 PUBLIC HIGHWAY AUTHORITY ("Second Amended and Restated Contract") is made and entered into as of this _____ day of _____, 2018, pursuant to Article XIV, Section 18(2) of the Colorado Constitution, part 2 of article 1, title 29, C.R.S., title 30, C.R.S., title 31, C.R.S., appropriate municipal charter provisions, and part 5 of article 4, title 43, C.R.S., by and between ADAMS COUNTY, a body politic and corporate and a political subdivision of the State of Colorado, ARAPAHOE COUNTY, a body politic and corporate and political subdivision of the State of Colorado, DOUGLAS COUNTY, a body politic and corporate and a political subdivision of the State of Colorado, the CITY OF AURORA, a municipal corporation and political subdivision of the State of Colorado, the TOWN OF PARKER, a municipal corporation and political subdivision of the State of Colorado, the CITY OF THORNTON, a municipal corporation and political subdivision of the State of Colorado, the CITY OF BRIGHTON, a municipal corporation and political subdivision of the State of Colorado, and the CITY OF COMMERCE CITY, a municipal corporation and political subdivision of the State of Colorado (singularly or collectively the "Governmental Unit(s)").

RECITALS

WHEREAS, the large population and population growth within the Denver metropolitan region, the significant and growing demand for Construction of beltways within the Denver metropolitan region to facilitate traffic movement and the inadequacy of current transportation facilities to meet that demand, the division of the Denver metropolitan region into a variety of incorporated and unincorporated areas, the need to coordinate planning and Construction of beltways or other transportation improvements to serve regional needs, and the limited availability of state and federal funds for such purposes, have caused the Colorado General Assembly to enact the Public Highway Authority Law in part 5 of article 4, title 43, C.R.S. ("the Act"); and

WHEREAS, it is the stated intention of the Colorado General Assembly that public highway authorities be formed to finance, Construct, operate, or maintain all or a portion of a beltway or other transportation improvements in, inter alia, the Denver metropolitan region which, because of the cost or the location thereof in the jurisdiction of more than one municipality or county, cannot feasibly be financed, Constructed, operated, or maintained by a municipality or county acting alone; and

WHEREAS, a public highway authority denominated the "E-470 Public Highway Authority" ("the Authority") was created by the Establishing Contract for the E-470 Public Highway Authority dated as of January 13, 1988, as amended by the First Amendment to the Establishing Contract for the E-470 Public Highway Authority dated as of March 2, 1988, as amended by the Second Amendment to the Establishing Contract for the E-470 Public Highway

Authority dated as of January 18, 1989, as amended by the Third Amendment to the Establishing Contract for the E-470 Public Highway Authority dated as of July 28, 1989 (the "Third Amendment"), as amended by the Fourth Amendment to the Establishing Contract for the E-470 Public Highway Authority (the "Fourth Amendment"), as amended by the Fifth Amendment to the Establishing Contract for the E-470 Public Highway Authority dated as of December 3, 1990 (the "Fifth Amendment"), as amended by the Sixth Amendment to the Establishing Contract for the E-470 Public Highway Authority dated as of January 10, 1995 (the "Sixth Amendment"), as amended by the Seventh Amendment to the Establishing Contract for the E-470 Public Highway Authority dated as of June 13, 1995, as amended by the Eighth Amendment to the Establishing Contract for the E-470 Public Highway Authority dated as of April 26, 2000, as amended by the 2001 Amended and Restated Establishing Contract for the E-470 Public Highway Authority, as amended by this Third Amended and Restated Contract, and as may be further amended from time to time (collectively and in its various iterations referred to herein as the "Establishing Contract"), by and between Adams County, Arapahoe County and Douglas County, and, by amendments to the Establishing Contract, the City of Aurora, the Town of Parker, the City of Thornton, the City of Brighton, and the City of Commerce City, to finance, Construct, operate or maintain E-470 and other Public Highways; and

WHEREAS, the execution of this Establishing Contract by the Governmental Units is permitted by Article XIV, Section 18(2) of the Colorado Constitution, part 2 of article 1, title 29, C.R.S., and the Act, and is essential to the continued economic growth of the Denver metropolitan region, is in the public interest, and will promote the health, safety, and welfare of the citizens of this state by securing for them more adequate transportation in the form of both E-470 Public Highway and other Public Highways in order to meet the regional need for coordinated planning and construction of beltways or other transportation improvements; and

WHEREAS, the right-of-way dedication provisions of the Third, Fourth, Fifth and Sixth Amendments ("the Right-of-Way Amendments") to the Establishing Contract are still in full force and effect as described in said Amendments and are considered to be fully incorporated by this Establishing Contract. Such Right-of-Way Amendments are attached hereto as Appendices A, B, C and D, respectively; and

NOW, THEREFORE, in consideration of the mutual promises and benefits herein expressed, and for other good and valuable consideration, the receipt and sufficiency of which is hereby freely acknowledged, the Governmental Units hereby covenant and agree as follows:

DEFINITIONS

As used in this Establishing Contract, unless the context otherwise requires:

"Affiliate" shall mean any Colorado local government, regional planning agency, or regional transportation agency seeking to have a non-voting member on the Board and accepted as such by the Governmental Units.

"Authority" means the E-470 Public Highway Authority, a body corporate and political subdivision of the State of Colorado created pursuant to the Establishing Contract and the Act.

"Board" means any board of directors of the Authority.

"Bond" means any bond, note, interim certificate, contract, or other evidence of indebtedness of the Authority authorized by the Act.

"Construct," "Constructed" or "Construction" means the planning, designing, engineering, acquisition, installation, construction, and reconstruction of E-470 or other Public Highways.

"County" means any county organized under the laws of the state, including any city and county.

"Director" means a voting member of the Board, and shall include a qualified alternate Director.

"E-470" shall mean the E-470 Public Highway which generally circumscribes the northern, eastern and southern perimeters of the Denver metropolitan region and which may comprise any and all elements of a Public Highway.

"Governmental Unit" means any political subdivision that is a party to this Third Amended and Restated Contract Establishing Contract.

"Meeting" means a regular or special meeting of the Board.

"Municipality" has the same meaning as that provided in section 31-1-101, C.R.S.

"Public Highway" shall have the meaning assigned to such term in Section 43-4-503(12), C.R.S. of the Act and the term shall be interpreted in accordance with the legislative declaration set forth in Section 43-4-502, C.R.S., the Authority's broad cooperative powers set forth in Section 43-4-510, C.R.S., and the cooperative powers of the Governmental Units set forth in Section 43-4-511, C.R.S. in order to provide beltways and other transportation improvements to serve regional needs.

"Statutory Representative" shall mean any representative designated as a non-voting member of the Board as provided in Section 43-4-504(5), C.R.S.

COVENANTS AND AGREEMENTS

1. Establishment and Denomination of Public Highway Authority. The Governmental Units hereby create and establish a public highway authority denominated the E-470 Public Highway Authority (the "Authority").

2. Purposes. The purposes of the Authority shall be to finance, Construct, operate, and/or maintain E-470 and other Public Highways as may be determined by the Board to aid in regional cooperation regarding transportation infrastructure, improvements and facilities which are presently inadequate given continued population growth and financial constraints upon state and local government in Colorado that continue to serve the overall mission of E-470 as adopted by its Board of Directors, and in this regard to carry out all or any part of those functions or activities permitted by the Act, except as specifically limited by this Establishing Contract.

3. Powers. The Authority, by and through the Board, shall possess all the powers, privileges and duties permitted by the Act, except as specifically limited by this Establishing Contract.

4. Establishment of Board of Directors. There is hereby established the Board, in which all legislative power of the Authority is vested. Each Governmental Unit shall have the right to appoint one Director to the Board, who shall be, at the time of appointment and throughout such Director's tenure on the Board, an elected officer of the legislative or governing body of such Governmental Unit. Such appointment shall be evidenced by notification, in writing, to the Authority by the appointing Governmental Unit. Each Director shall serve at the pleasure of such Governmental Unit and may only be removed or replaced by the Governmental Unit that appointed such Director. The Board may from time to time establish Affiliates the representatives of which shall be non-voting members of the Board. Statutory Representatives shall be non-voting members of the Board.

The Board shall elect executive officers of the Authority. The officers of the Authority shall consist of a Chairman, a Vice-Chairman, a Secretary, and a Treasurer (or if the Board elects to combine the offices of Secretary and Treasurer then a Secretary/Treasurer); in addition such officers, assistant officers, agents and employees that the Board may from time to time deem necessary may be elected by the Board or be appointed in a manner prescribed by the Board. The Chairman shall preside at all Meetings of the Board. The Vice-Chairman shall assist the Chairman and shall, in the absence of the Chairman, preside at all Meetings of the Board and shall perform such other duties as the Board may from time to time determine. The Secretary or Secretary/Treasurer shall maintain the records and files of the Board and of the Authority and shall perform such other duties as the Board may from time to time prescribe. The Treasurer or Secretary/Treasurer shall keep and maintain financial records of the Board and of the Authority and shall report on the financial state of the Authority as directed by the Board, and shall perform such other duties as the Board may from time to time prescribe. The Chairman, Vice-Chairman, Treasurer or Secretary/Treasurer shall be elected from among and by the Directors. In the event of a vacancy in the office of Chairman, the Vice-Chairman shall serve as Chairman for the remaining portion of the Chairman's term of office. The Board may act by resolution to prescribe the terms of office, times of elections and methods of filling vacancies in offices other than Chairman.

The Board may act by motion and/or resolution and the actual attendance of a majority of Directors at a Meeting of the Board shall constitute a quorum, the vote of a majority of Directors at a Meeting of the Board at which a quorum is present shall be required to constitute action by the Board, except for: (i) approval or amendment of an annual operating budget for the Authority, (ii) convening an executive session of the Board, or (iii) determining the location of the alignment of E-

470, in which case the affirmative vote of at least two-thirds of all Directors shall be required. For purposes of a quorum being present pursuant to this paragraph, Directors may attend, participate, debate and vote on matters before the Board by telephone or other two-way electronic means of communications provided the comments and votes of the Directors attending electronically are able to be contemporaneously communicated to the Directors and to the general public present at the Meeting.

Any Director may, from time to time, designate, in writing, an Alternate Director, who shall possess the same qualifications as a Director and who shall, in the absence of such Director, be entitled to attend Meetings of the Board and exercise the same powers of such Director. However, Alternate Directors are not eligible for election to office.

5. Meetings. Regular Meetings of the Board shall be held from time to time, on such day, and at such hour as the Board shall from time to time establish. Special Meetings of the Board may be held at any time at any place within or without the state of Colorado, upon seventy-two (72) hours' electronic or printed written notice to each Director, unless such notice be waived in writing by the Director entitled to receive notice. Notice of all Meetings of the Board shall be given by providing written notice thereof to the clerk of each Governmental Unit at least three (3) days in advance of such meeting. Notice of all Meetings of the Board shall be given to the public as required by law.

6. Distribution, Disposition, or Division of Assets. Subject to the provisions of this paragraph, the Board may make such decisions regarding the distribution, disposition or division of assets of the Authority as it deems appropriate. In all cases, the fixed assets of the Authority shall be distributed to each Governmental Unit that has territory where such assets are situated, and in this regard a Municipality's territory shall apply as opposed to that of a County. The liquid assets of the Authority shall be distributed to each Governmental Unit on an equitable basis, subject to unanimous ratification by the Governmental Units.

7. Boundaries of the Authority. The boundaries of the Authority are hereby redesignated and reestablished as one and one-half miles on either side of the proposed center-line of E-470, and as more specifically described in the legal description and sketch attached hereto as Exhibit A and incorporated herein by this reference. The Governmental Units acknowledge that the boundaries of the Authority may be changed by action of two-thirds of the Governmental Units of the Authority. Section 43-4-506(1)(f), C.R.S. authorizes the Authority to construct, finance, operate or maintain Public Highways within or without the Authority's boundaries, as may be determined from time to time by the Board.

8. Term, Withdrawal and Dissolution. This Establishing Contract shall commence on the date of its full execution by all the Governmental Units, and be perpetual until terminated or rescinded by the unanimous written agreement of all the Governmental Units or until the Authority consists of fewer than two (2) Governmental Units. Additionally, any Governmental Unit may withdraw from participation in the Authority upon thirty (30) days' written notice of its intent to withdraw to the Board. However, no such termination, rescission, dissolution or withdrawal shall be effective until and unless satisfactory provisions have been made to discharge all the obligations of the Authority, including any Bonds issued or assumed thereby, in

a manner that will protect the rights and interest of the holders of such obligations, including Bonds of the Authority, and any withdrawing Governmental Unit shall remain liable for the performance of any financial commitments made to the Authority prior to the time of such withdrawal.

9. Amendments. This Establishing Contract contains all of the terms agreed upon by and among the Governmental Units. Any amendments or modifications to this Establishing Contract must be reduced to writing and executed by all the Governmental Units to be valid and binding.

10. Local Land Use of Governmental Units for E-470. All decisions relating to local land use aspects of E-470 including, without limitation, the approval and/or provision of slip ramps, interchanges, over-passes, etc., shall remain under the exclusive control of the Governmental Unit within whose territory such facilities are located; provided, however, that no such decision(s) shall impair the overall integrity or function of E-470; and provided further that no such decision(s) shall impose any additional costs upon the Authority or the other Governmental Units.

11. Eminent Domain. The Authority may exercise the power of eminent domain as provided in section 43-4-506(1)(h), C.R.S.; provided, however, the Authority may not exercise the power of eminent domain with respect to the property of any Governmental Unit.

12. Addition of Parties. The Board may include additional parties to this Establishing Contract upon such terms and conditions as it deems appropriate; provided, however, that any decision by the Board to include additional parties shall be subject to the amendment of this Establishing Contract by the unanimous, written agreement of the Governmental Units, and shall be further subject to compliance with the provision of the Act.

13. Successor to Prior Entity. The Authority may be the successor in interest to the E-470 Authority established by contract as of February 25, 1985, pursuant to Article XIV, Section 18(2) of the Colorado Constitution and part 2 of article 1, title 29, C.R.S., and shall be entitled to all rights and privileges, and may assume all obligations and liabilities, thereof under all existing contracts to which the E-470 Authority is, as of the date of execution of this Establishing Contract, a party. It is further the intent of the Governmental Units that the Authority shall be entitled to all rights and privileges, and shall assume all obligations and liabilities, of Arapahoe County with respect to bonds previously issued by Arapahoe County for the planning, designing, engineering, acquisition, installation, Construction, and reconstruction of E-470.

14. Reliance. The Governmental Units acknowledge and agree that each is relying on the performance of the other(s) under this Establishing Contract, and that all actions or changes of positions undertaken pursuant thereto are made in such reliance. The Government Units further acknowledge and agree that each enters into this Establishing Contract in reliance upon the affirmative agreement contained in Section 43-4-516, C.R.S., that, *inter alia*, the state will not limit, alter, restrict, or impair the rights vested in the Authority or the rights or obligations of any of the Governmental Units in relation thereto.

15. Indemnification. The Authority shall indemnify and defend each Director, officer and employee of the Authority in connection with any claim or actual or threatened suit, action, or proceeding (civil, criminal, or other, including appeals), in which he or she may be involved in his or her official capacity by reason of his or her being or having been such Director, officer or employee, or by reason of any action or omission by him or her in any such capacity, and shall pay any judgment resulting therefrom, except any liability arising from criminal offenses or willful misconduct or gross negligence. The Authority shall further indemnify and defend each Governmental Unit in connection with any claim or actual or threatened suit, action or proceeding (civil, criminal, or other, including appeals), in which the Governmental Unit may be involved in its capacity as a member of the Authority, and shall pay any judgment resulting therefrom, except for liability arising from criminal offenses or willful misconduct or gross negligence. Such indemnification and duty to defend in either event shall be subject to and limited by the resources of the Authority available for such purposes, including available insurance coverage, which the Authority shall act in good faith to obtain and maintain.

16. No Obligations. No Bond or other obligation of the Authority shall be deemed to be an obligation or indebtedness of any Governmental Unit.

17. Non-Impairment. Nothing in this Establishing Contract shall be deemed to restrict, modify or otherwise impair the powers of any Governmental Unit in any manner, including any separate or discrete actions which may be taken by any Governmental Unit relating to the financing, Construction, operation or maintenance of E-470 or other Public Highways.

18. Severability. If any provision of this Establishing Contract or the application thereof to any Governmental Unit(s), person, entity or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Establishing Contract, which can be given effect without the invalid provision or application, and to this end the provisions of this Establishing Contract, and each and every provision thereof, are declared to be severable.

19. Applicable Laws. This Establishing Contract shall be governed by and construed in accordance with the laws of the state of Colorado.

20. Assignability. No Governmental Unit may assign or transfer any of its rights or obligations hereunder without the prior written consent of the Governmental Unit(s) that is a nonassigning Party(ies) to this Establishing Contract.

21. Binding Effect. The provisions of this Establishing Contract shall bind and shall inure to the benefit of the Governmental Unit(s) and to their respective successors and permitted assigns, if any.

22. Enforcement. The Governmental Unit(s) agree and acknowledge that this Establishing Contract may be enforced in law or in equity, by decree of specific performance, and, in the event of a judgment that a breaching Governmental Unit acted arbitrarily and capriciously, or in bad faith, including an award of appropriate damages, or such other legal and

equitable relief as may be available subject to the provisions of the statutes of the state of Colorado.

23. Counterpart Execution. This Establishing Contract may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[The remainder of this page left intentionally blank.]

ADAMS COUNTY

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ and _____ as _____ of Adams County.

Witness my hand and official seal.

My commission expires: _____

Notary Public

ARAPAHOE COUNTY

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ and _____ as _____ of Arapahoe County.

Witness my hand and official seal.

My commission expires: _____

Notary Public

DOUGLAS COUNTY

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ and _____ as _____ of Douglas County.

Witness my hand and official seal.

My commission expires: _____

Notary Public

CITY OF AURORA

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ and _____ as _____ of the City of Aurora.

Witness my hand and official seal.

My commission expires: _____

Notary Public

TOWN OF PARKER

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ and _____ as _____ of the Town of Parker.

Witness my hand and official seal.

My commission expires: _____

Notary Public

CITY OF THORNTON

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ and _____ as _____ of the City of Thornton.

Witness my hand and official seal.

My commission expires: _____

Notary Public

CITY OF BRIGHTON

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ and _____ as _____ of the City of Brighton.

Witness my hand and official seal.

My commission expires: _____

Notary Public

CITY OF COMMERCE CITY

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____ as _____ and _____ as _____ of the City of Commerce City.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A