

MAINTENANCE CONTRACT

THIS CONTRACT, made this _____ day of _____, 20____, by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "State" or "CDOT", and THE CITY OF COMMERCE CITY, 7887 East 60th Avenue, Commerce City, Colorado 80022, SAP ID# 2000396, hereinafter referred to as "the Local Agency" or "the City".

RECITALS

CDOT anticipates portions of State Highway 44 (SH 44) from approximately Belle Creek Boulevard to State Highway 2 to be constructed by the Local Agency within CDOT right of way (ROW), hereinafter referred to as the "Project"; and

Upon completion of the Project CDOT and the City desire to agree upon the division of responsibility for the maintenance of portions of the Project that lie within CDOT ROW, hereinafter referred to as "the Work"; and

CDOT desires that, upon completion of the construction of the Project, the City shall accept responsibility for the portions of the Project that lie within CDOT ROW as shown in Exhibit A; and

The City is adequately staffed and suitably equipped to undertake and satisfactorily carry out the maintenance responsibilities under this contract; and

Required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

This contract is executed by the State under authority of Sections §§43-1-106, 43-1-110, 43-1-201 et seq., 43-2-102 and 43-2-144 C.R.S., as amended; and

This contract is executed by the City under the authority of an appropriate resolution duly passed and adopted by the authorized representatives of the City, which also establishes the

authority under which the City enters into this contract and is attached hereto and made a part hereof.

NOW, THEREFORE, it is hereby agreed that:

I. PROJECT DESCRIPTION

“The Work” under this contract shall consist of the maintenance responsibility/activities for SH 44 from Belle Creek Boulevard to State Highway 2 that lies within CDOT ROW as shown in Exhibit A.

II. CDOT COMMITMENTS

- A. The State will provide liaison with the City through the State's Region Transportation Director, CDOT Region 1, 2000 South Holly Street, Denver, Colorado 80222, (303) 757-9459. Said Director will also be responsible for coordinating the State's activities under this contract.
- B. Upon the City accepting maintenance responsibility for the maintenance portions of the Project shown in Exhibit A, the execution of this contract and the completion and acceptance of the construction by the State, as evidenced by an acceptance letter from the CDOT Region 1 Transportation Director, the State shall transfer the maintenance responsibility, for the items within CDOT ROW identified as the City's area of responsibility for the Work in Exhibit A.

III. CITY COMMITMENTS

- A. The City will provide liaison with the State through Daren Sterling, Project Manager for Commerce City, 8602 Rosemary Street, Commerce City, Colorado 80022, (303) 289-8175.
- B. Upon the execution of this contract and completion of construction, the City shall accept maintenance responsibility for the portions of the improvements identified as the City's area of responsibility for the Work in Exhibit A.

- C. The Local Agency shall, at its own cost and expense maintain, operate, and make ample provision each year for the maintenance of the improvements, during their useful life, as shown in Exhibit A. Such maintenance and operations shall be in accordance with all applicable statutes and ordinances, and regulations promulgated thereunder, which define the Local Agency's obligations to maintain such improvements. CDOT will make periodic inspections of the Project to verify that such improvements are being adequately maintained.
- D. Maintenance services to be performed by the City, at its sole expense, under this contract shall include the services as detailed in Exhibit A.
- 1) The State reserves the right to determine the quality and adequacy of the work by the City under this contract. The State will notify the City in writing of any deficiency in the work. Upon notice of any deficiency in the work, either: a) by the State; or b) by its own observation; or c) by any other means, the City shall take action as soon as possible, but not later than 30 working days after such notice to correct the deficiency and to protect the safety of the traveling public. In the event the City, for any reason, does not or cannot correct the deficiency within 30 working days, or demonstrate that action satisfactory to cure such default has been commenced and will be completed in a timely manner or otherwise demonstrated that no deficiency exists, the State reserves the right to correct the deficiency and to bill the City for the actual cost of such work.
 - a) If, in the future, the City desires to install any artwork within CDOT ROW, the City shall obtain approval from the State prior to installing said artwork. Any freestanding artwork shall be outside of the required clear zone. The City shall maintain any artwork installed by the City within CDOT ROW and the State shall have no responsibility for maintenance, protection, repair or replacement for any artwork installed by the City within CDOT ROW.

- b) If the City desires to install any architectural features such as towers, tiered walls, landscaping, etc. at the I-76 bridge, the City shall follow the proper developer review process to install these items.
- c) If a contractor is hired by the City to perform any of the City's responsibilities stated in this contract, the contractor will be required to acquire the appropriate permit from CDOT Region 1 Permits Office.
- d) The City shall use reasonable efforts to restrict access to the CDOT ROW to only those persons and equipment necessary to perform the work described in this contract. The City and its agents, employees and assigns shall not use the mainline roadway of I-76 or any portion of the shoulder thereof as means of ingress or egress to and from the CDOT ROW with respect to any task to be performed by the City pursuant to the terms of this contract. In lieu thereof, the City, its agents, employees, and assigns shall access the CDOT ROW from the city street or SH 44. If any future work shall be performed by the City within I-76 ROW that requires lane closures to I-76, the City shall be required to acquire the appropriate permit from CDOT Region 1 Permits Office.
- e) The City acknowledges and agrees that the State may, in the future, expand the I-76 corridor, and in the event of such expansion, the items being maintained by the City shall be modified by the State, at the State's expense. In the event of such modification, addition to or demolition of the I-76 corridor by the State, the State shall provide to the City, at least 180 days prior to the commencement of any such activities, written notice which shall include specific descriptions of the impact of such activities upon the landscaped features. The State and City, mutually agree to fully cooperate with one another and to take all steps necessary to coordinate the activities to be performed by the State so as to minimize the impact upon and damage to the landscaped features and other improvements installed in the CDOT ROW and to maximize the

salvage and preservation of the landscaping and other improvements to the CDOT ROW during such work to be performed by the State. At the City's option, the City may remove any materials, artwork or growing stock located in such landscaped areas, provided that such removal occurs during the 180-day notice period.

- f) The City shall be entitled to terminate this contract at any time by giving the State ninety (90) days prior written notice. In the event that funds sufficient to enable the City's performance of its obligations here under are not appropriated by the City's governing body, this contract may be terminated upon thirty (30) days written notice. The State shall be entitled to terminate this contract at any time that the City defaults upon this contract and fails to cure such default within the cure period set forth in Paragraph 2 hereof. In the event of termination of this contract by either party, the appearance of the CDOT ROW shall, at the State's discretion, be maintained in accordance with the normal standards of the State or revert to and thereafter be allowed to return to its original (native) condition.

- E. The City shall perform the maintenance services in a satisfactory manner, and in accordance with the terms of this contract, the terms of the access permit, and in accord with the State Highway ROW Manual, Section 8, subsection 7, hereby incorporated by reference, and pursuant to §43-2-135 C.R.S, as amended.

IV. GENERAL PROVISIONS

- A. Upon the execution of this contract, the State will no longer be liable or responsible in any manner for the maintenance and repair of the portions of the Project that lie within CDOT ROW to the extent the City is obligated under this contract.
- B. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and attachments hereto which may require continued performance or compliance beyond the termination date of the contract shall survive such

termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the City.

- C. This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.
- D. To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
- E. This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.
- F. Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- G. The term of this contract shall begin the date first above written and shall extend for the useful life of the state highway reconstruction improvements, unless earlier modified or terminated by written agreement of the Parties hereto.
- H. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this contract shall give or allow any such claim or right of action by any other or third person on such contract. It is the

express intention of the parties that any person or entity other than the parties receiving services or benefits under this contract be deemed to be an incidental beneficiary only.

- I. The City assures and guarantees that it possesses the legal authority to enter into this contract. The City warrants that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the City to its terms. The person(s) executing this contract on behalf of the City warrants that they have full authorization to execute this contract.

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:
John W. Hickenlooper, GOVERNOR
Colorado Department of Transportation
Donald E. Hunt, Executive Director

Commerce City, Colorado
Legal Name of Contracting Entity

CDOT Vendor # 2000396

By: Timothy J. Harris, P.E., Chief Engineer

Date: _____

Maria D'Andrea, PE; Director of Public Works

CORPORATIONS:
(A corporate attestation is required.)

Attest (Seal) By _____
(Corporate Secretary or Equivalent, or Town/City/County Clerk)

(Place corporate seal here, if available)

Exhibit A

SH 44 from Belle Creek Blvd.(~ MP 1.88) to SH 2 (~ MP 0.00)

1. CDOT will be responsible for the ownership and maintenance of all pavement, traffic control devices, and pavement markings.
2. CDOT will be responsible for snow removal.
3. Commerce City will be responsible for street sweeping, maintenance of curb, sidewalks and trails and retaining walls.

SH 44 Structures over I-76(~ MP 1.075)

1. CDOT will be responsible for the ownership and the structural maintenance of the proposed structure, E-17-AEG, which will carry eastbound traffic on SH 44 over I-76 and existing structure E-17-VR which will carry westbound traffic over I-76. This includes structural repair of columns and bridle rail.
2. CDOT will be responsible for snow removal and pavement markings on the structure.
3. CDOT is responsible for maintaining the slope-paving weep-holes that will drain into the existing roadside ditches along I-76. This is minimal drainage.
4. Commerce City will maintain the pedestrian railing. Commerce City will maintain the architectural features, (logo panels, towers, architectural signage and tiered walls), including removal of graffiti, once the improvements are constructed. (These features are not part of Phase 3B plan set.) The Phase 3B project will paint both structures as follows: girders will be spruce green, bridge railing concrete will be light gray; the 10M bridge railing will be brown, the exterior pedestrian railing will be black and the concrete columns will be tan. Commerce City will be responsible for maintenance of paint on the 10M bridge railing, the concrete columns (both sides) and the exterior black pedestrian railing. CDOT will be responsible for maintaining the spruce green girders(#24159), the light gray (#36440) concrete bridge rail, the light gray abutment, and wingwalls. See attached graphic. Commerce City will be responsible for maintaining the drains in the tiered walls that will drain into the I-76 ditch. This is minimal drainage.

SH44 Structures over the O'Brian Canal(~ MP .463):

1. CDOT will be responsible for the ownership and the structural maintenance of the road and proposed structures E-17-AEH and E-17-AEI over the O'Brian Canal.
2. Commerce City will be responsible for maintenance of the canal lining located directly underneath SH 44.
3. CDOT will be responsible for all the snow removal and pavement markings on the structures.
4. CDOT will be responsible for all sign installation and maintenance related to SH 44. Commerce City is responsible for all other signs.
5. Commerce City will be responsible for maintaining the pedestrian underpass (Structure 044A000500BL) including the trail approaches, walls and landscaping at the O'Brian Canal structures. Commerce City will be responsible for maintaining the drains that collect the drainage behind the wing walls.

Exhibit A

6. Commerce City will be responsible for maintenance of retaining walls.

SH44 Structure CBC at the Burlington Ditch:

1. CDOT will be responsible for the ownership and the structural maintenance of the road and proposed structure 044A000580BL at the Burlington Ditch.
2. Commerce City will be responsible for maintenance of the canal lining located directly underneath SH 44.
3. CDOT will be responsible for all the snow removal and pavement markings on the structures.
4. CDOT will be responsible for all sign installation and maintenance related to SH 44. Commerce City is responsible for all other signs.

Proposed Structure at First Creek

1. Commerce City will be responsible for the ownership and structural maintenance of the RCBC at First Creek (Structure E-17-AEQ). Commerce City will be responsible for the ownership and structural maintenance of three additional RCBC's once they are constructed. (Three additional RCBC's are a Bid Alternate in Phase 3B plan set.)

Landscaping:

1. Commerce City will be responsible for maintaining new landscaping and irrigation in the median area when constructed. (Phase 3B plan set does not include landscaping in the median). If native seeding is planted, CDOT will mow per normal schedule. If more frequent mowing is desired, Commerce City will perform. See attached CDOT mowing standards schedule.
2. Commerce City will be responsible for maintaining irrigation and landscaping at I-76 structures when constructed.
3. Commerce City will be responsible for mowing the native grass outside the roadway within CDOT ROW along the length of this Project.

Water Quality/Detention Ponds (shown on attached map):

1. Commerce City will be responsible for maintaining Permanent Water Quality (PWQ) pond at I-76 and Havana that is within CDOT ROW. Facility can be accessed from city street, Havana Street. Commerce City will also be responsible for maintaining the trickle channel north of 104th and East of I-76.
2. Commerce City will be responsible for maintaining First Creek Detention Pond that is on private property. Facility is accessed from SH 44 (104th Ave.) east of the UPRR ROW.
3. Commerce City will be responsible for maintaining Henderson Creek Retention Pond that is on private property. Facility is accessed from Joliet Street and then an existing maintenance road that follows the overhead utility lines on the east side of Joliet.
4. Commerce City will be responsible for maintaining the two Belle Creek Channel rock check dams installed in Phase 3A (SH 44/US 85 Intersection Project) as shown in Exhibit A.

Exhibit A

Storm Sewers (shown on attached map):

1. Commerce City will be responsible for maintaining all new storm sewers on this Project, with the exception of the pipes listed in #2 below.
2. CDOT will be responsible for maintaining the storm sewer pipe within the I-76 ROW south of SH 44. (This pipe ties to existing culverts under I-76)

Traffic Signals:

1. Traffic signals are owned by CDOT and will be maintained by both CDOT and Commerce City. Commerce City will be responsible for maintaining illuminated street name signs, street light luminaires, closed circuit TV cameras, decorative bases, black traffic signal heads, and the Federal green paint on poles and mast arms. All other maintenance will be CDOT's responsibility.
2. CDOT will maintain and locate CDOT's 2" fiber optic conduit from Belle Creek to Lima Street.
3. Commerce City will be responsible for maintaining their 3" fiber optic conduit.
4. CDOT will be responsible for maintaining the queue cutter signal (for UPRR track).

Lighting:

1. United Power will be responsible for the maintenance and operations of street lighting.

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- *CDOT will not indemnify the Local Agencies.*

Exhibit A

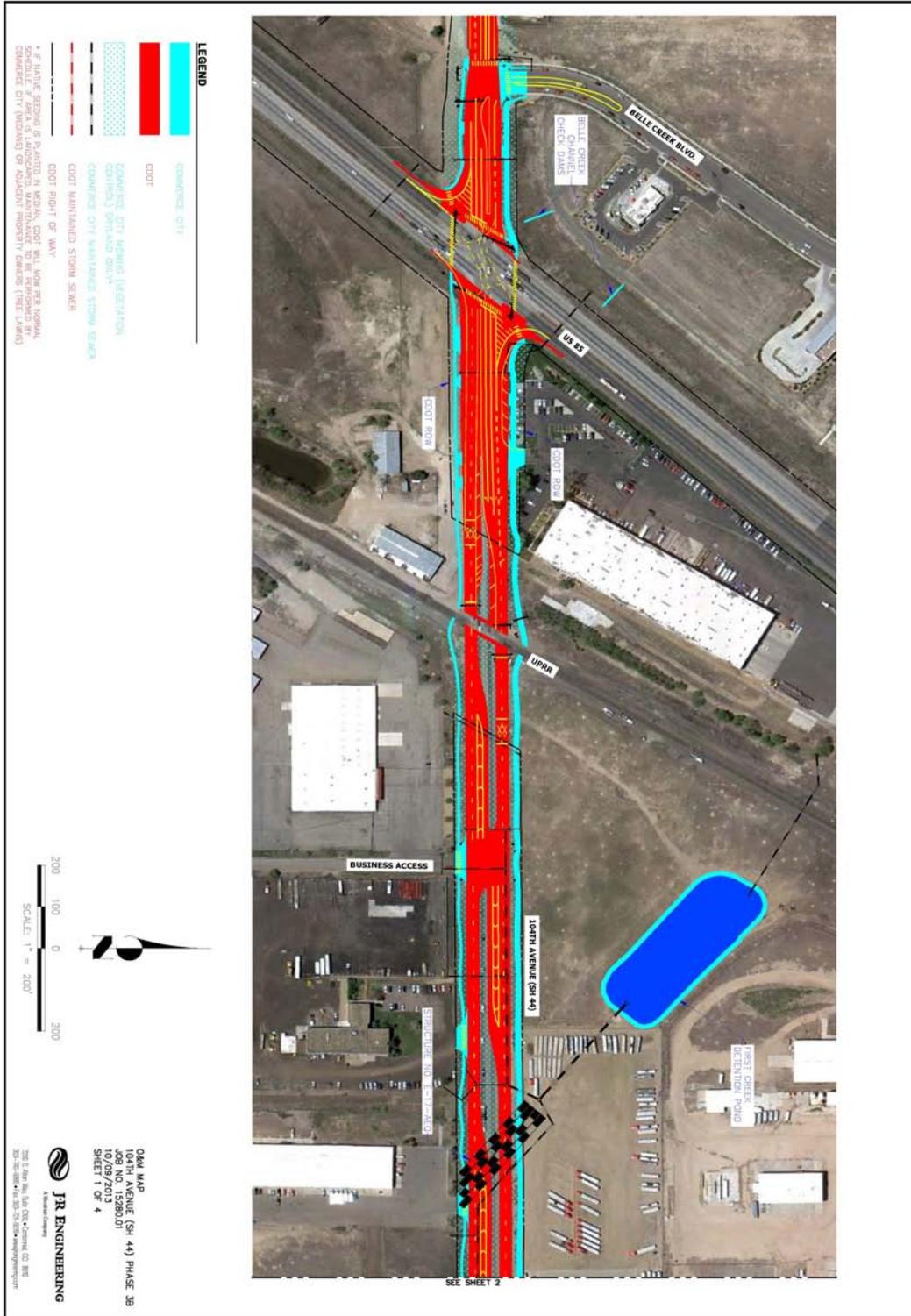
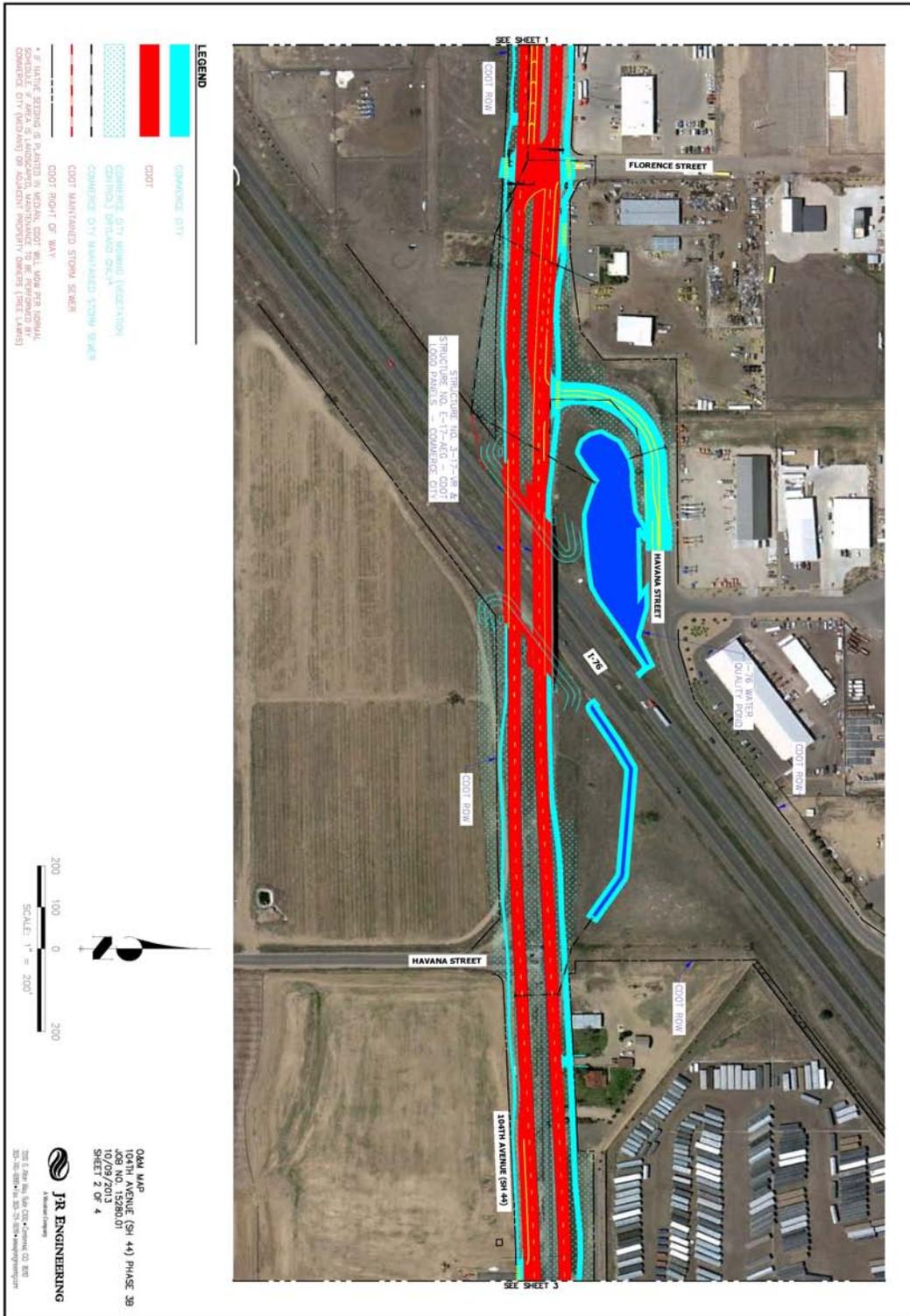


Exhibit A



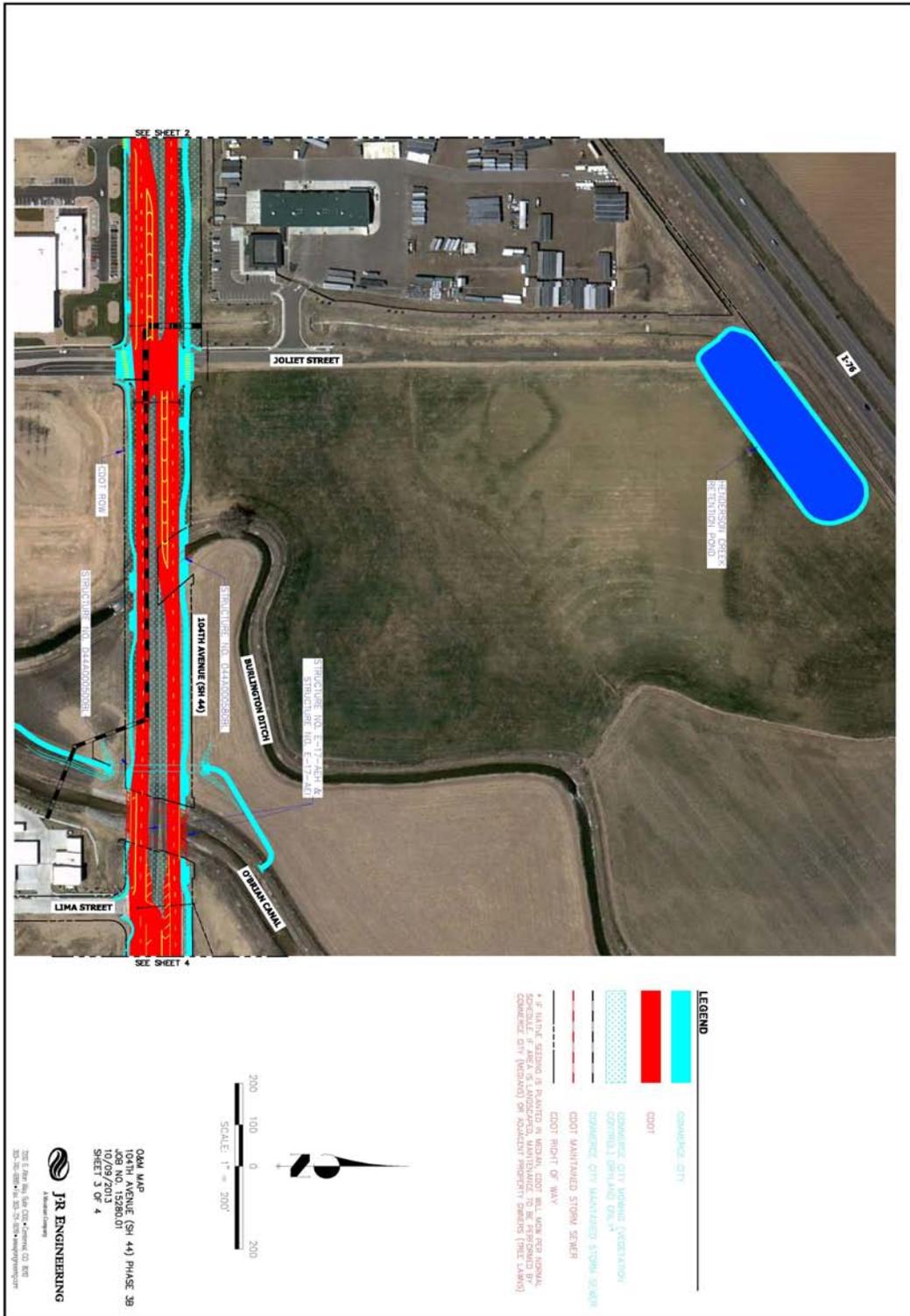


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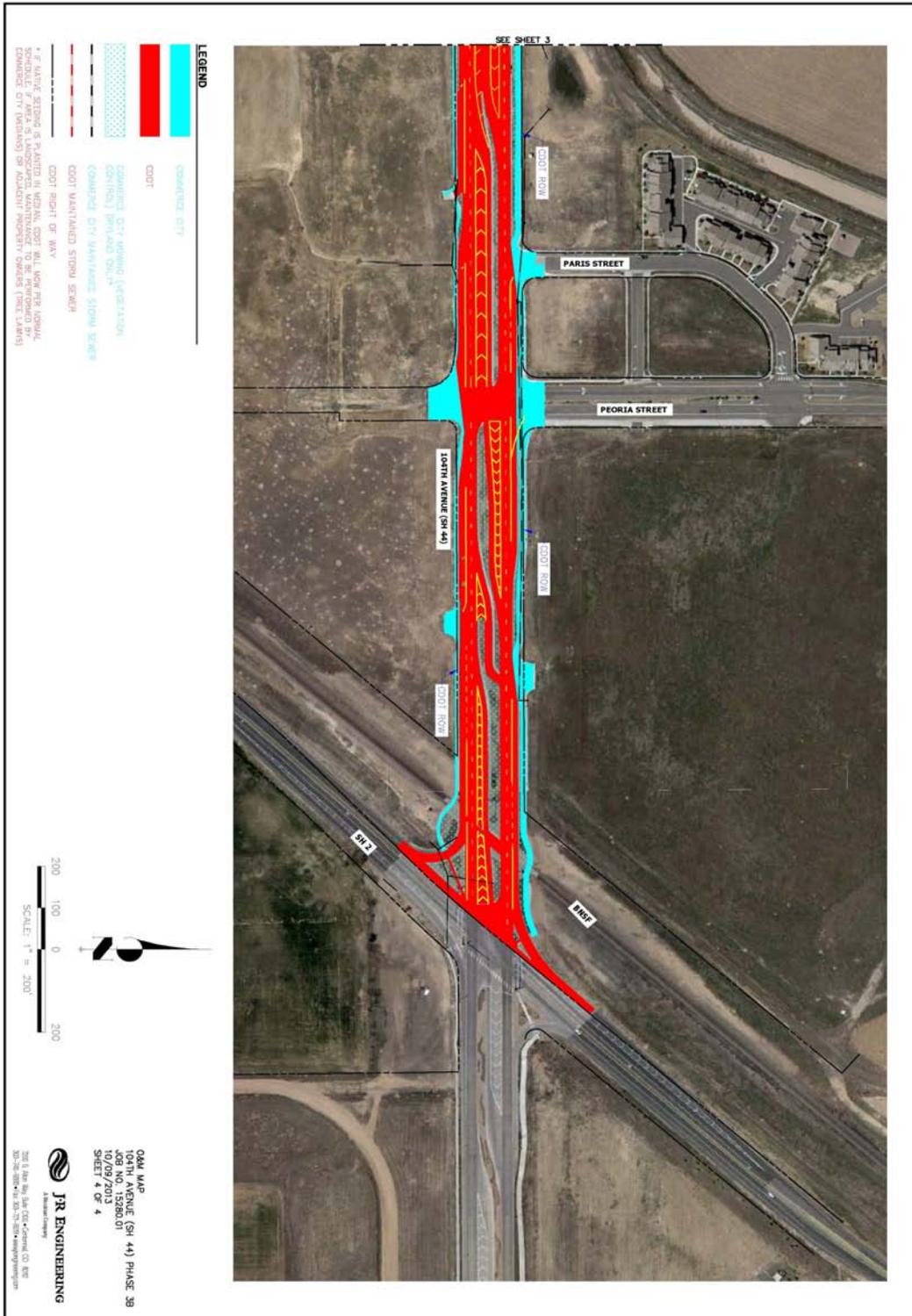


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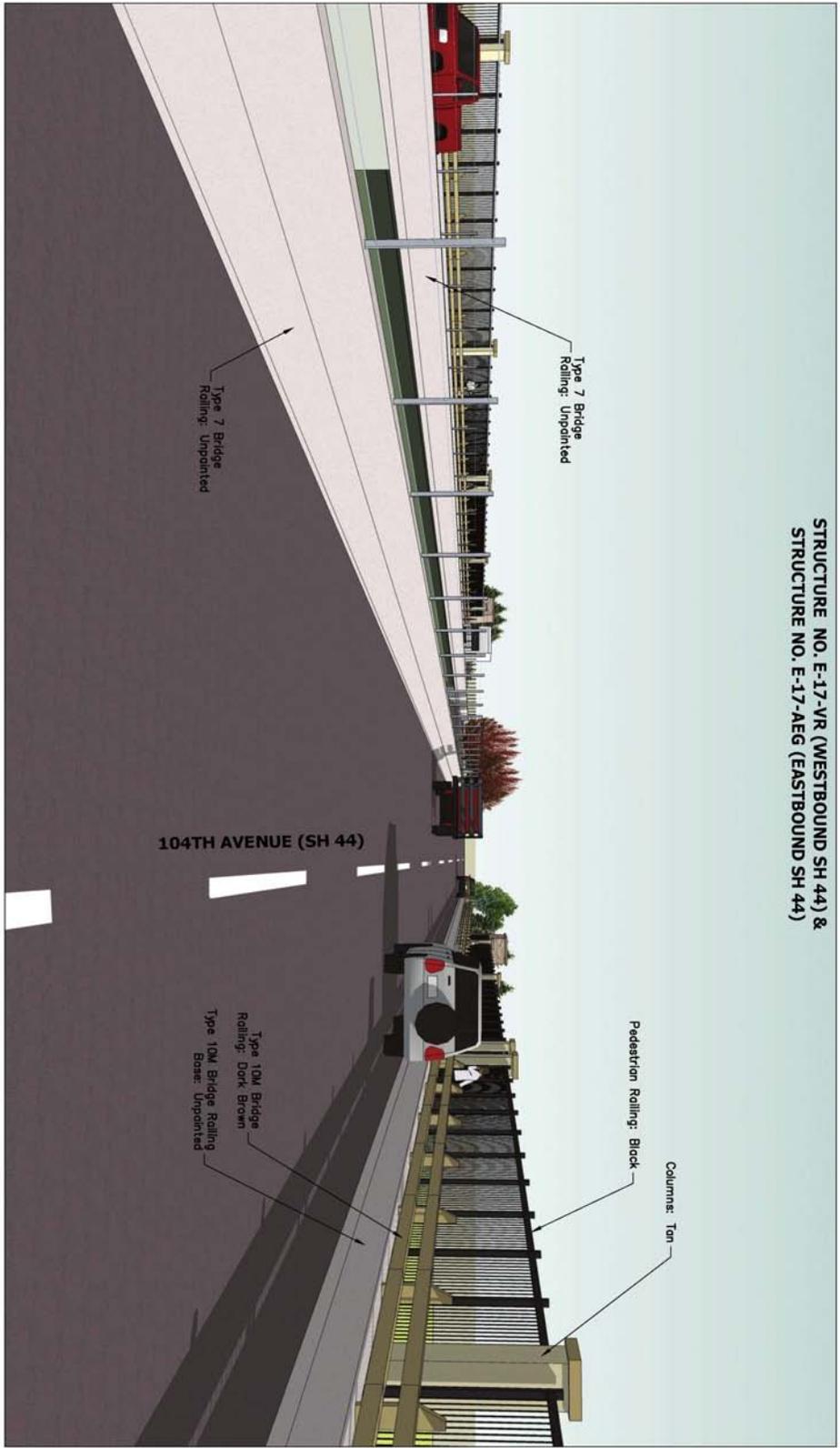


Exhibit A



Exhibit B

LOCAL AGENCY RESOLUTION OR ORDANANCE

Exhibit B