

RESOLUTION NO. R-998-077

DC9843403

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

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL
 AGREEMENT BETWEEN THE COLORADO DEPARTMENT OF
 TRANSPORTATION, HIGHLANDS RANCH METROPOLITAN
 DISTRICT NO. 3, AND DOUGLAS COUNTY CONCERNING THE
 MAINTENANCE OF HIGHLANDS RANCH BOULEVARD FROM
 COUNTY LINE ROAD ON THE NORTH TO PLAZA DRIVE ON
 THE SOUTH**

WHEREAS, Douglas County (hereinafter the "County"), desires to enter into an agreement with the Colorado Department of Transportation (hereinafter the "State") and Highlands Metropolitan District No. 3 (hereinafter the "District") concerning the maintenance of Highlands Ranch Boulevard from County Line Road on the north to Plaza Drive on the south; and

WHEREAS, the County, the State and the District are willing to enter into such an agreement in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto; and

WHEREAS, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C.R.S.; now, therefore,

BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the intergovernmental agreement between Douglas County, the Colorado Department of Transportation, and Highlands Ranch Metropolitan District No. 3, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chairman of the Board is authorized to execute the agreement on behalf of Douglas County.

PASSED AND ADOPTED this 2nd day of June, 1998, in Castle Rock, Douglas County, Colorado.

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

BY:

James R. Sullivan
JAMES R. SULLIVAN
 Chairman

ATTEST:

Wanda W. Bailey
WANDA W. BAILEY
 Deputy Clerk and Recorder



CC 4701-076, 10305 98 HA6 01028
C470/MCLELLAN INTERCHANGE
MAINTENANCE AGREEMENT
REGION 6/LEW

MAINTENANCE AGREEMENT

THIS AGREEMENT, made this _____ day of _____,
19_____, by and between the State of Colorado for the use and
benefit of THE DEPARTMENT OF TRANSPORTATION, hereinafter referred
to as "the State" or CDOT, DOUGLAS COUNTY, State of Colorado,
hereinafter referred to as "the County" and HIGHLANDS RANCH
DISTRICT #3, a quasi-municipal corporation and political
subdivision of the State of Colorado, hereinafter referred to as
"the Local Agency".

WHEREAS, the parties have agreed to proceed cooperatively with
the construction of an interchange at the intersection of SH 470
and Highlands Ranch Boulevard in Douglas County, Colorado,
including the construction of Highlands Ranch Boulevard from
County Line Road on the north to Plaza Drive on the south ("the
Project").

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

WHEREAS, in furtherance of the cooperative effort, the Local
Agency is, pursuant to a contract between CDOT and Highlands Ranch
Metropolitan District, dated February 17, 1994, Contract Amendment
Number 1 dated June 14, 1996, a contract dated March 5, 1997, and
a Construction Account Agreement also dated March 5, 1997,
providing the funds for the construction of the Project; and

WHEREAS, the parties, in a meeting held on September 23, 1996

in furtherance of the cooperative effort, and memorialized in a letter from the County and the Local Agency to the Colorado Department of Transportation dated October 9, 1996 (Exhibit B), agreed to share the responsibilities for the maintenance of "the Project"; and

WHEREAS, this agreement is meant to be the "formal agreement" referred to in the letter of October 9, 1996; and

WHEREAS, SH 470 is on the State Highway System as defined in §43-2-101, C.R.S., as amended, and is under the ultimate control and supervision of the State; and

WHEREAS, pursuant to §43-2-124, C.R.S., as amended, and the contracts referred to above, the Local Agency is responsible for the costs of construction of the Project and Douglas County is responsible for the maintenance of the County Road system; and

WHEREAS, the Project consists of: construction of Highlands Ranch Boulevard, including a bridge and ramps; installation of signals; and the installation of landscape features along the interchange ramps; and

WHEREAS, the State, the Local Agency, and the County desire to enter into this contract to establish their responsibilities with respect to maintenance and other responsibilities for "the Project"; and

WHEREAS, the parties are authorized to execute this contract under the provisions of §§29-1-203, 43-1-114, and 43-2-144, C.R.S., as amended, and by the County pursuant to the attached resolution, and by the Local Agency pursuant to §§32-1-1001, and 32-1-1004.

NOW, THEREFORE, it is hereby agreed that:

1. The Local Agency shall be deemed to have the power necessary to complete the project, and shall be responsible, at its own expense, for all maintenance of landscaping within the state highway right of way (Landscaped Area) as indicated in Exhibit A. "Maintenance activities" includes, but is not limited to, irrigation, replacement of dead or diseased sod or other plants, mowing, pruning, spraying of insecticides and fungicides, and trash removal. Exhibit A (map showing Landscaped Area) is attached hereto and incorporated herein as terms and conditions of this contract by this reference.
2. The Local Agency shall provide water for irrigation purposes in the Landscaped Area at no cost to the State. The Local Agency shall maintain the Landscaped Area subject to State design and maintenance standards and/or specifications.
3. The parties agree that the State retains the option to widen SH 470 or to perform any construction work on or along SH 470 that it determines to be necessary; if such construction work is performed, then the Local Agency shall, at its own cost, relocate landscaping and sprinklers within the Landscaped Area. If such modifications, additions, or demolition to SH 470 are performed by the State, then the State shall provide to the Local Agency, at least 180 days' prior to the commencement of such activities, written notice of such proposed activities, which notice shall include specific descriptions of the impact of such activities upon the Landscaped Area. The State, the Local Agency and the County mutually agree to cooperate with each other to the extent reasonably possible and to take all reasonable steps

necessary to coordinate the activities to be performed by the State so as to minimize the impact upon the damage to the landscaping and other improvements installed in the Landscaped Area, and to maximize the salvage and preservation of the landscaping and other improvements to the Landscaped Area during all facets of such work to be performed by the State.

4. Bridge Maintenance. The County shall, at it's own expense, be responsible for all "nonstructural" maintenance of the roadway driving surface down to the top layer of rebar of Highlands Ranch Boulevard across the bridge, except maintenance and repair of the raised island which shall be the responsibility of the Local Agency. All other maintenance of the bridge on Highlands Ranch Boulevard, including repairs and replacement, shall be the responsibility of the Local Agency. The State will perform periodic bridge inspections, and will inform the County and the Local Agency of needed repairs and maintenance.
5. Highlands Ranch Boulevard. The County shall, at its own expense, provide snow and ice removal from the bridge and the portion of Highlands Ranch Boulevard constructed as part of the Project. The State shall have no responsibility for any snow removal from the bridge or Highlands Ranch Boulevard. All maintenance of Highlands Ranch Boulevard, except snow and ice removal and traffic signals, shall be the responsibility of the Local Agency until final acceptance of Highlands Ranch Boulevard by the County in accordance with the Douglas County Roadway Design and Construction Standards. The County shall be responsible for the repair and maintenance of any traffic signals installed on Highlands Ranch Boulevard.

After final acceptance of Highlands Ranch Boulevard, the County will assume full maintenance of Highlands Ranch Boulevard except the bridge, which shall be maintained as provided in paragraph 4 above.

6. Landscaped Area. The Local Agency shall, during the term of this contract, be permitted to enter upon the Landscaped Area for the purpose of performing the maintenance activities. The Local Agency shall use its reasonable efforts to restrict access to the Landscaped Area to only those persons and equipment necessary to perform the work described in this contract. The Local Agency and its agents, employees and assigns shall not use SH 470 or any portion of the shoulder thereof as a means of ingress or egress to and from the Landscaped Area with respect to any of the tasks to be performed by the Local Agency pursuant to the terms of this contract. In lieu thereof, the Local Agency, its agents, employees, and assigns shall access the Landscaped Area from Highlands Ranch Boulevard and access ramps.
7. SH 470 Ramps. The State shall be responsible for standard maintenance of the ramps, with the exception of the items listed in Paragraph 4. Such standard maintenance of the ramps shall include, but not be limited to, repairs and replacement, ice and snow removal. The Local Agency shall, at its own expense, repair any damage to the ramps constructed as part of the project, or the portion of SH 470 situated along the Landscaped Area resulting from its negligent acts or omissions from its maintenance activities in the landscaped area as soon as practicable following the

8. A. The Local Agency and the County shall carry the following minimum amounts of insurance.
- (1) Workers' Compensation and Employer Liability in statutory limits.
 - (2) Comprehensive or Commercial General Liability, and Automobile Liability Policy for amounts not less than:
 - Bodily Injury
\$600,000.00 each occurrence or \$600,000.00
 - Property Damage
\$600,000.00 each occurrence combined single limit
 - (3) Unemployment insurance in Statutory limits.
- B. Said insurance shall be maintained in full force and effect during the term of this contract and for two calendar years thereafter, and shall protect the Local Agency and the County, its employees, agents and representatives from claims for damages to property arising from the negligent or wrongful acts or omissions of the Local Agency and the County, its employees, subcontractors, agents or representatives, in the performance of the work covered herein.
- C. Furthermore, the Local Agency and the County shall carry valuable papers insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes or other similar data related to the work covered by this contract, in the event of their loss or destruction until such time as the final submission by the Local Agency and the County has been made and accepted by the State.

- D. Certificates showing the Local Agency and the County are carrying the above-described insurance shall be attached to and made a part of the contract. Said certificates shall name the State as an additional insured on General and Automobile liability policies for a period of two years*
9. In the event that the Local Agency and/or the County shall default on any of their obligations hereunder, then the State shall, as its sole remedy, provide the Local Agency or the County with thirty (30) days prior written notice of such default ("Notice of Default"), setting forth the specific defaults which the State is alleging and stating specifically such evidence the State has with respect thereto. The Local Agency and/or the County shall have thirty (30) days following its receipt of such Notice of Default to cure such default or defaults or otherwise demonstrate that action satisfactory to cure each such default has been commenced and will be completed in a timely manner, or otherwise demonstrate that no default exists ("Cure Period"). In the event that the Local Agency and/or the County fail to cure said defaults on or before the expiration of the Cure Period, the State may terminate this contract by delivering to the Local Agency and the County, upon the expiration of the cure Period, a written notice of termination ("Termination Notice"), and upon receipt of such Termination Notice, this contract shall terminate and be of no further force or effect and the parties shall be relieved of all of their obligations hereunder. At the discretion of the State, the Termination Notice may require the removal of all or any part of the construction allowed herein at the expense of the Local Agency, and in such case the Landscaped Area shall

be substantially restored to its original condition.

10. To the extent authorized by law, each party, shall indemnify, save and hold harmless each other party, against any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any act or omission by such party or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
11. This contract shall commence upon the execution of this contract by all parties hereto, and subject to annual appropriation of funds therefore, shall continue for an initial term of ten (10) years ("Initial Term") unless otherwise terminated pursuant to the terms of this contract. Provided that neither the Local Agency nor the County are in default under the contract, this contract shall automatically renew for ten (10) additional ten-year terms ("Additional Term") unless the Local Agency or the County provide the State with written notice of its intention to terminate this contract at least sixty (60) days prior to the expiration of the Initial Term or the applicable Additional Term.
12. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this contract. Any provision of this contract whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in

whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

13. At all times during the performance of this contract, the Local Agency and the County shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.
14. The signatories hereto aver that they are familiar with 18-8-301, et seq. (Bribery and Corrupt Influences) and 18-8-401, et seq. (Abuse of Public Office), C.R.S., 1986 Replacement Vol., and that no violation of such provisions is present.
15. The signatories aver that to their knowledge, no state employee has a personal or beneficial interest whatsoever in the service or property described herein.
16. Except for the contracts listed in the recitals and except as otherwise stated herein, 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 effect whatsoever, unless in writing. No subsequent novation, renewal, addition, deletion, or the amendment hereto shall have any force or effect unless embodied in a written supplemental contract executed and approved pursuant to the State Fiscal Rules.
17. 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.

18. Each party represents and warrants that it has taken all actions that are necessary or required by internal procedures and bylaws and applicable law, to properly authorize the undersigned signatory to lawfully execute this contract on behalf of such party and to bind the party to its terms.
19. The Special Provisions attached hereto are hereby made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year first above written.

ATTEST:

STATE OF COLORADO
ROY ROMER, GOVERNOR

Chief Clerk

By _____
Executive Director
DEPARTMENT OF TRANSPORTATION

APPROVED:

CLIFFORD W. HALL
State Controller

GALE A. NORTON
Attorney General

By _____
GEORGE MCCULLAR
CDOT Controller

By _____
BARRY B. RYAN
Assistant Attorney General
Civil Litigation Section

ATTEST (SEAL):

HIGHLANDS RANCH METROPOLITAN
DISTRICT NO. 3
Highlands Ranch, Colorado

By [Signature]
Title Dir. of Engineering & Operations

By [Signature]
Title General Manager

FEIN 846000636

DOUGLAS COUNTY
Colorado
By [Signature]
Title _____

FEIN 846000761

SPECIAL PROVISIONS

CONTROLLER'S APPROVAL

1. This contract shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado or such assistant as he may designate. This provision is applicable to any contract involving the payment of money by the State.

FUND AVAILABILITY

2. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

BOND REQUIREMENT

3. If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provender or other supplies used or consumed by such contractor or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with CRS 38-26-106.

INDEMNIFICATION

4. To the extent authorized by law, the contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

DISCRIMINATION AND AFFIRMATIVE ACTION

5. The contractor agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (CRS 24-34-402), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975. Pursuant thereto, the following provisions shall be contained in all State contracts or sub-contracts.

During the performance of this contract, the contractor agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion, or transfer, recruitment or recruitment advertisements; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the contractor's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated April 16, 1975, and of the rules, regulations, and relevant Orders of the Governor.

(d) The contractor and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(e) A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment of work opportunity because of race, creed, color, sex, national origin, or ancestry.

(f) A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this contract to be discriminatory or obstruct or prevent any person from complying with the provisions of this contract or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this contract to be discriminatory.

(g) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of April 16, 1975 and the rules, regulations, or orders promulgated

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EXHIBIT A

Potential Landscaped Area

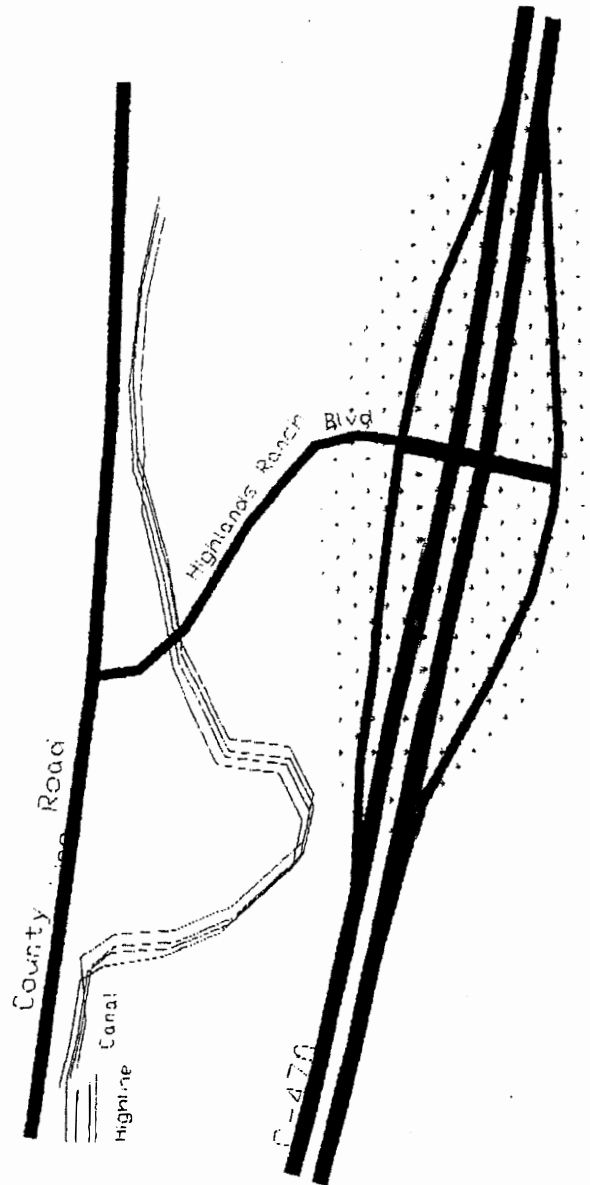
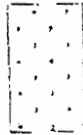




EXHIBIT B

HIGHLANDS RANCH

METROPOLITAN DISTRICTS

10305
RECEIVED BY
OCT 16 1996
BUSINESS OFFICE

October 9, 1996

#3
10305
Mr. Larry Warner
Colorado Department of Transportation
Region VI
2000 South Holly Street
Denver, CO 80222

RE: C-470/McLellan Interchange

Dear Larry:


In a meeting held on September 23, 1996, between CDOT, Douglas County, and HRMD officials, it was agreed upon, in principle, that the maintenance responsibilities for this interchange would be shared by all three parties. CDOT would accept the ownership and maintenance responsibility of the ramps, Douglas County would accept responsibility for maintenance of the driving surface of Highlands Ranch Boulevard across the bridge limited to "non-structural maintenance" (which will be more particularly detailed in the future I.G.A.) of the bridge, and HRMD would accept ownership of the bridge structure.

Since HRMD will have standing in this project as one of the owners of improvements, it would also be HRMD's responsibility to take part in any litigation brought by a third party against this project.

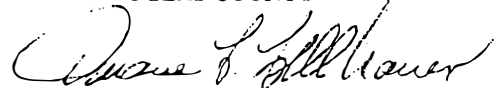
It is our understanding that a formal agreement outlining terms and conditions of this arrangement will be executed prior to the award of the construction contract. Thank you for your assistance in this matter and I trust this clarifies the issues relating to maintenance of this project.

Sincerely,

HIGHLANDS RANCH METROPOLITAN DISTRICT


Terry R. Nolan
General Manager

DOUGLAS COUNTY


Duane Fellhauer
Director of Public Works

TN/mds

cc: Randy Furst - CDOT
Gabriella Hogg - CDOT

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