

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF DOUGLAS AND
THE COLORADO DEPARTMENT OF TRANSPORTATION**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made this 5th day of October, 2010, between the BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, COLORADO, whose address is 100 Third Street, Castle Rock, CO 80104 ("County") and the COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT"), whose address is 4201 E. Arkansas Ave., Denver, CO, 80222.

WHEREAS, the County and the CDOT seek to mutually cooperate in sharing facilities for storage of sand and salt and for truck washing; and

WHEREAS, the County owns and operates the truck wash located at 3030 N. Industrial Way, Castle Rock, CO (Building A- Exhibit A); and

WHEREAS, CDOT owns and maintains the sand and salt storage site located at 4455 Castleton Ct., Castle Rock, CO (Building B- Exhibit A); and

WHEREAS, CDOT owns the salt/sand storage facility (sand/salt Facility) and the property upon which it is located, said sand/salt Facility has been a shared use sand/salt Facility between the County and CDOT for a substantial period of time, with a concrete wall having been constructed to separate the respective salt/sand storage areas of each party. Each party shall continue to share said sand/salt Facility and shall bear general clean-up responsibilities for their respective storage areas. CDOT shall continue to have sole ownership for said Facility and ownership of the land upon which it is located. CDOT shall be responsible for routine maintenance of the sand/salt Facility.

NOW, THEREFORE, for and in consideration of the promises and other good and valuable consideration, the County and CDOT agree as follows:

1. AUTHORITY: The County and CDOT represent that each respective party has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this Agreement on behalf of the County and CDOT and to bind the County and CDOT to its terms.

2. FACILITY EXCHANGE:

- A. In exchange for the continued use of sand/salt Facility from CDOT, the County will provide CDOT access credentials for trucks identified by CDOT allowing said trucks to use the County's truck wash facility
- B. In exchange for the use of the truck wash facility, CDOT shall provide the County access to, and use of, the sand/salt Facility for trucks designated by the County.

3. OWNERSHIP AND MAINTENANCE: CDOT shall own, insure, and maintain the sand/salt Facility. CDOT's insurance policy will not cover any of the County's trucks or other property that is stored in the sand/salt Facility.

4. TERM: It is mutually agreed by the parties that the term of this Agreement shall commence as of the execution date by all parties and terminate on December 31, 2010. This Agreement shall automatically renew for a one year period at the end of each successive term unless either party terminates the Agreement, in writing, on or before November 30 of each year, beginning November 30, 2010.

5. HAZARDOUS MATERIALS: The County shall only have access to the sand/salt Facility for its trucks and shall not use CDOT's sand/salt Facility for the storage, treatment, transportation, handling, production or disposal of Hazardous Materials. For purposes of this Agreement, "Hazardous Materials" includes, without limitation, any flammable materials, explosive, hazardous or toxic substance, or related materials defined the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Sections 1801, *et seq.*), and in the regulations promulgated pursuant thereto, or any other applicable State or local governmental law, ordinance, rule or regulation.

6. NO WAIVER OF GOVERNMENTAL IMMUNITY ACT: The parties hereto understand and agree that the parties, their commissioners, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the parties.

7. TERMINATION: Either party shall have the right to terminate this Agreement, by giving written notice to the other party of such termination and specifying the effective date thereof, which notice shall be given at least thirty (30) days before the effective date of such termination.

8. NOTICES: Notices concerning termination of this Agreement, notices of alleged or actual violations of the terms or provisions of this Agreement, and all other notices shall be made as follows:

by CDOT to:

The Board of County Commissioners
100 Third Street
Castle Rock, CO 80104
Attn: Doug DeBord, County Manager

with a copy to:

Douglas County Facilities Management
3026 N. Industrial Way
Castle Rock, CO 80109
Attn: Vicky Starkey, Facilities Director

with a copy to:

Douglas County Public Works Operations
3030 N. Industrial Way
Castle Rock, CO 80109
Attn: Randy Teague, Director

and by the County to:

Colorado Department of Transportation
Region One
18500 East Colfax
Aurora, CO 80011
Attn: Mike DeLong, Transportation Maintenance
Superintendent

Said notices shall be delivered personally during normal business hours to the appropriate office above, or by prepaid first class U.S. mail, via facsimile or other method authorized in writing by the Authorized Representative. Mailed notices shall be deemed effective upon receipt or three (3) days after the date of mailing, whichever is earlier. The parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but such substitutions shall not be effective until actual receipt of written notification.

9. GOVERNING LAW; VENUE: This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, City and County of Denver, State of Colorado.

10. COMPLIANCE WITH ALL LAWS AND REGULATIONS: All of the activities conducted under this Agreement by CDOT shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado.

11. SEVERABILITY: In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected. Should either party fail to enforce a specific term of this Agreement, it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

12. NO THIRD PARTY BENEFICIARIES: The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the County and CDOT, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.

13. HEADINGS; RECITALS: The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The recitals to this Agreement are incorporated herein.

14. ENTIRE AGREEMENT: The parties acknowledge and agree that the provisions contained herein constitute the entire Agreement and that all representations made by any commissioner, official, officer, director, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement, except those which are expressly reserved herein to the Authorized Representative, shall be valid unless they are contained in writing and executed by all the parties with the same formality as this Agreement.

15. COUNTY EXECUTION OF CONTRACT: This Agreement is expressly subject to, and shall not be or become effective or binding on the County, until execution by all signatories of the County.

16. CDOT, its employees and contractors shall not be considered agents, employees or officers of the County for any purpose whatsoever. The County, its employees and contractors shall not be considered agents, employees or officers of CDOT for any purpose whatsoever.

17. All financial obligations imposed on the parties by this Agreement are subject to annual appropriation by the parties, subject to Section 29-1-110, C.R.S.

IN WITNESS WHEREOF, the County and CDOT have executed this Agreement as of the above date.

COLORADO DEPARTMENT OF TRANSPORTATION

By: Pamela Hutton
Pamela Hutton
Title: CDOT Chief Engineer

Date: 9-15-10

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

By: John K. Pelle
STEVEN A. BOARD, Chair

ATTEST:
Melissa Pelleter
MELISSA PELLETER
Deputy Clerk



APPROVED AS TO CONTENT:

Douglas J. DeBord
Douglas J. DeBord, County Manager

APPROVED AS TO FISCAL CONTENT:

Andrew Copland
Andrew Copland
Director of Finance

Date: 9/24/10

APPROVED AS TO LEGAL FORM:

Myron A. Clark
Myron A. Clark
Sr. Asst. County Attorney

Date: Sept. 27, 2010

Exhibit A

Douglas County Carwash, Truckwash, & CDOT Salt/Sand Shed

EXHIBIT A

