

INTERGOVERNMENTAL AGREEMENT
REGARDING COUNTY LINE ROAD/ and S. SAMPSON GULCH WAY

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") dated this 10th day of March, 2015, by and between the City of Aurora, Colorado, (the "City") and the Board of County Commissioners of the County of Douglas (the "County") (collectively, the "Parties").

RECITALS

WHEREAS, pursuant to Colorado Constitution Article XIV, Section I8(2)(a), and Section 29-1-202, C.R.S., the City and the County may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, this Agreement shall apply to County Line Road and S. Sampson Gulch Way shown described in Exhibit A attached hereto; and

WHEREAS, portions of County Line Road straddle the boundary between the County and the City and portions of County Line Road and S. Sampson Gulch Way are located entirely in one of the two jurisdictions; and

WHEREAS, County Line Road between Delbert Road and Piney Lake Road is currently a two-lane paved road; and

WHEREAS, S. Sampson Gulch Way between Piney Lake Road and the Whispering Pines Development in the City has not yet been constructed; and

WHEREAS, the parties hereto intend to set forth the terms of design, construction, and maintenance of County Line Road and S. Sampson Gulch Way from the Whispering Pines Development, in the City, to Delbert Road.

NOW, THEREFORE, it is hereby mutually agreed as follows:

AGREEMENT

1. **PROPERTY SUBJECT TO AGREEMENT**: This Agreement shall apply to County Line Road and S. Sampson Gulch Way as illustrated shown in Exhibit A, attached hereto.

2. **COUNTY LINE ROAD AND S. SAMPSON GULCH WAY IMPROVEMENTS**: The improvements governed by this Agreement shall include the construction of County Line Road and S. Sampson Gulch Way to City standards for the full length of the improvements. S.

Sampson Gulch Way from the Whispering Pines Development to Piney Lake Road within the County shall be improved to a two-lane collector standard within a 74-ft. right-of-way as shown in Exhibit B. County Line Road from Piney Lake Road to Delbert Road shall be improved to a four-lane arterial standard within a 114-ft. right-of-way as shown in Exhibit B. The intersections of Piney Lake Road with County Line Road/S. Sampson Gulch Way and Delbert Road/Monaghan Road with County Line Road shall be paved in concrete per City standards. The County Line Road and S. Sampson Gulch Way improvements governed by this Agreement shall include engineering design, curb and gutter, paving, medians (where applicable), sidewalks, storm drainage and water quality improvements, erosion and sedimentation control, street signs, striping, street lights, traffic signals, and landscaping (where applicable).

3. RIGHT-OF-WAY: Each of the parties hereto shall obtain the necessary right-of-way for County Line Road in accordance with their respective policies and procedures and the dictate of applicable law. In general, abutting landowners shall be required to dedicate the right-of-way within each Party's jurisdiction in accordance with each jurisdiction's regulations, policies and procedures.

4. CONSTRUCTION: Aurora shall require the Whispering Pines Development to construct the full width of S. Sampson Gulch Way from the southern limit of its development to Piney Lake Road through the County in accordance with the phasing plan set forth in the Whispering Pines Framework Development Plan. The Parties will cooperate to provide all necessary easements for construction, drainage, and grading.

The City shall require High Plains Country Club to construct the north half of County Line Road adjacent to its development in accordance with the phasing plan set forth in the High Plains Country Club Framework Development Plan.

The County shall require the developer on the south side of County Line Road from Piney Lake Road to Delbert Road to build the south half of County Line Road at the time of development in accordance with their respective policies and procedures. The design and construction of the south half of County Line Road shall be in accordance with City standards per this Agreement. The County shall acquire or cause the dedication of any additional right-of-way necessary for turn lanes for future development within the County.

5. STORM DRAINAGE IMPROVEMENTS: All storm drainage improvements, including water quality, shall be designed and constructed in accordance with City standards and regulations.

6. STREET LIGHTS: All street lighting shall meet City standards.

7. MEDIAN LANDSCAPING IMPROVEMENTS: Each Party shall cooperate in the review and approval of appropriate landscaping plans for the median. Landscaping

maintenance shall be done by the adjacent homeowners association, business owners association or metropolitan district in the City through license agreement with the appropriate jurisdiction.

8. REVIEW AND APPROVAL: Each Party shall have the right to review, approve, and collect review fees for the construction plans related to work within its jurisdiction. The City shall have the right to approve all plans related to County Line Road and S. Sampson Gulch Way prior to construction, regardless of jurisdiction. The City shall have the authority to decide disputes concerning design issues or standards, except where specifically addressed to the contrary in this Agreement.

9. ACCESS POINTS: Access points onto County Line Road and S. Sampson Gulch Way shall be mutually agreed upon by both the City and the County.

10. PERMITTING AND INSPECTION FOR COUNTY LINE ROAD AND S. SAMPSON GULCH WAY: The City shall be responsible for issuing all permits for roadway construction and providing the inspections related to said permits. The City shall provide written notice to County Engineering Services of all change orders requested for the design and construction. The County shall notify the City in writing within five (5) business days if the County has an objection to the approval of a change order. In the event of such objection, the parties hereto agree to work cooperatively to resolve the objection prior to the approval of the change order.

11. MAINTENANCE OF COUNTY LINE ROAD AND S. SAMPSON GULCH WAY: Notwithstanding the fact that County Line Road/Sampson Gulch Way is located within both the County and the City, the City shall provide the maintenance of County Line Road/Sampson Gulch Way as shown in Exhibits A and B. In this Agreement, maintenance shall include, but not be limited to, snow removal, roadway improvements, repair of pavement, curb, gutter, sidewalk, storm drainage and water quality improvements, signage, striping, traffic signals, and erosion control.

12. TERM. The initial term of this Agreement shall commence on 3/10/15, 2015, and shall continue in full force and effect up to and including December 31, 2015, unless otherwise agreed to in writing. The Agreement will then automatically renew for successive one year periods unless and until either Party gives notice on or before October 31st of the then current term that such Party is terminating the Agreement on December 31st of the current term.

13. INDEPENDENT CONTRACTOR. Both the County and the City are independent contractors, and nothing herein contained shall constitute or designate the County or the City or any of either of their employees or agents as employees of the other Party for any purpose. It is agreed that each Party shall have direct control over its employees and agents with

respect to the manner and performance of any work performed under this Agreement. BOTH INDEPENDENT CONTRACTORS UNDERSTAND AND AGREE THAT NEITHER IS ENTITLED TO WORKERS' COMPENSATION OR UNEMPLOYMENT BENEFITS THROUGH THE OTHER PARTY AND EACH IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX TO ITS OWN EMPLOYEES AND AGENTS AS REQUIRED BY LAW.

14. EACH PARTY RESPONSIBLE FOR ITS OWN ACTIONS. In any action by any third party brought against either Party in connection with the subject matter of this Agreement, neither Party shall be liable for the acts or omissions of the other Party, and each Party shall bear its own costs with respect to the defense thereof.

15. APPROPRIATION. The Parties' obligations under this Agreement are conditioned on the prior appropriation of good and sufficient funds for such purpose in subsequent fiscal years. The Parties agree to use good faith efforts to cause appropriation of good and sufficient funds for performance of the obligations herein for subsequent years. This Agreement and/or any extensions to the initial term of this Agreement shall be contingent upon annual funding being appropriated, budgeted, and otherwise made available for such purposes by the City and by the County. In the event either Party does not appropriate sufficient funds to perform any work under this Agreement for a subsequent fiscal year, such Party shall inform the other party of such fact as soon as is reasonable under the circumstances and under no circumstances later than the beginning of any subsequent term.

16. 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.

17. CONTROLLING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any legal proceedings shall be in the Douglas County District Court.

18. NOTICES. Except as otherwise provided herein, all notices or payments required to be given under this Agreement shall be in writing and shall be hand delivered or sent by first class mail postage prepaid, to the following addresses:

If to the County:

Board of County Commissioners
100 Third Street
Castle Rock, CO 80104

With a copy to:

Douglas County Department of Public Works Engineering
Attention: Director of Engineering Services
100 Third Street
Castle Rock, CO 80104

If to the City of Aurora:

City of Aurora
Attention: Director of Public Works
15151 East Alameda Parkway
Aurora, Colorado 80012

All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received one (1) day after hand delivery or three (3) days after mailing. Either Party, by written notice so provided, may change the address to which future notices shall be sent.

19. **NO WAIVER OF GOVERNMENTAL IMMUNITY ACT.** The parties hereto understand and agree that the County and City, and each of 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 (the "CGIA"), §§ 24-10-101 to 120, C.R.S., or otherwise available to the County or the City. To the extent the CGIA imposes varying obligations or contains different waivers of immunity for Cities and Counties, both the City and the County agree that each will remain liable for the independent obligations under the CGIA whether due to acts or omissions or property interests, and neither party shall be the agent of the other or liable for the obligations of the other under the provisions of the CGIA.

20. **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 Parties, 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.

21. **COMPLIANCE WITH ALL LAWS AND REGULATIONS:** All of the work performed under this Agreement by either Party shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Parties shall also comply with all applicable ordinances, regulations, and resolutions of the County and/or the City as applicable and shall commit no trespass on any public or private property in the performance of any of the work embraced by this Agreement.

22. **CONFLICT OF INTEREST:** The Parties agree that no official, officer or employee of the County or of the City shall have any personal or beneficial interest whatsoever

in the services or property described herein. The Parties agree that any such personal interest would be a conflict of interest herein. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of either Party or any of their employees by placing the Party's own interests, or the interest of any party with whom that Party has a contractual arrangement, in conflict with those of the other Party.

23. **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.

24. **RECITALS**: The Recitals to this Agreement are incorporated herein by this reference.

25. **ENTIRE AGREEMENT**. This Agreement constitutes the entire Agreement between the Parties hereto relating to the work specified herein and sets forth the rights, duties, and obligations of each to the other as of the effective date hereof. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. This Agreement may not be modified except, by a writing executed by both the City and the County.

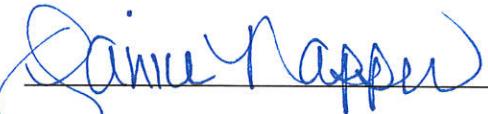
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

CITY OF AURORA, COLORADO



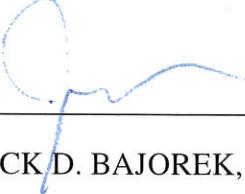
STEPHEN D. HOGAN, Mayor

ATTEST:



JANICE NAPPER, City Clerk
Attorney

APPROVED AS TO FORM:



JACK D. BAJOREK, Assistant City

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

By: Jill E. Repella

Jill E. Repella, Chair

ATTEST:

Jackie Hoch Jr
MELISSA A. PELLETIER, Deputy Clerk



APPROVED AS TO CONTENT:

By: Douglas J. Debord
Douglas J. Debord, County Manager

DATE: 3/2/15

APPROVED AS TO FISCAL CONTENT:

Andrew Copland
Andrew Copland
Director of Finance

Date: 3/2/15

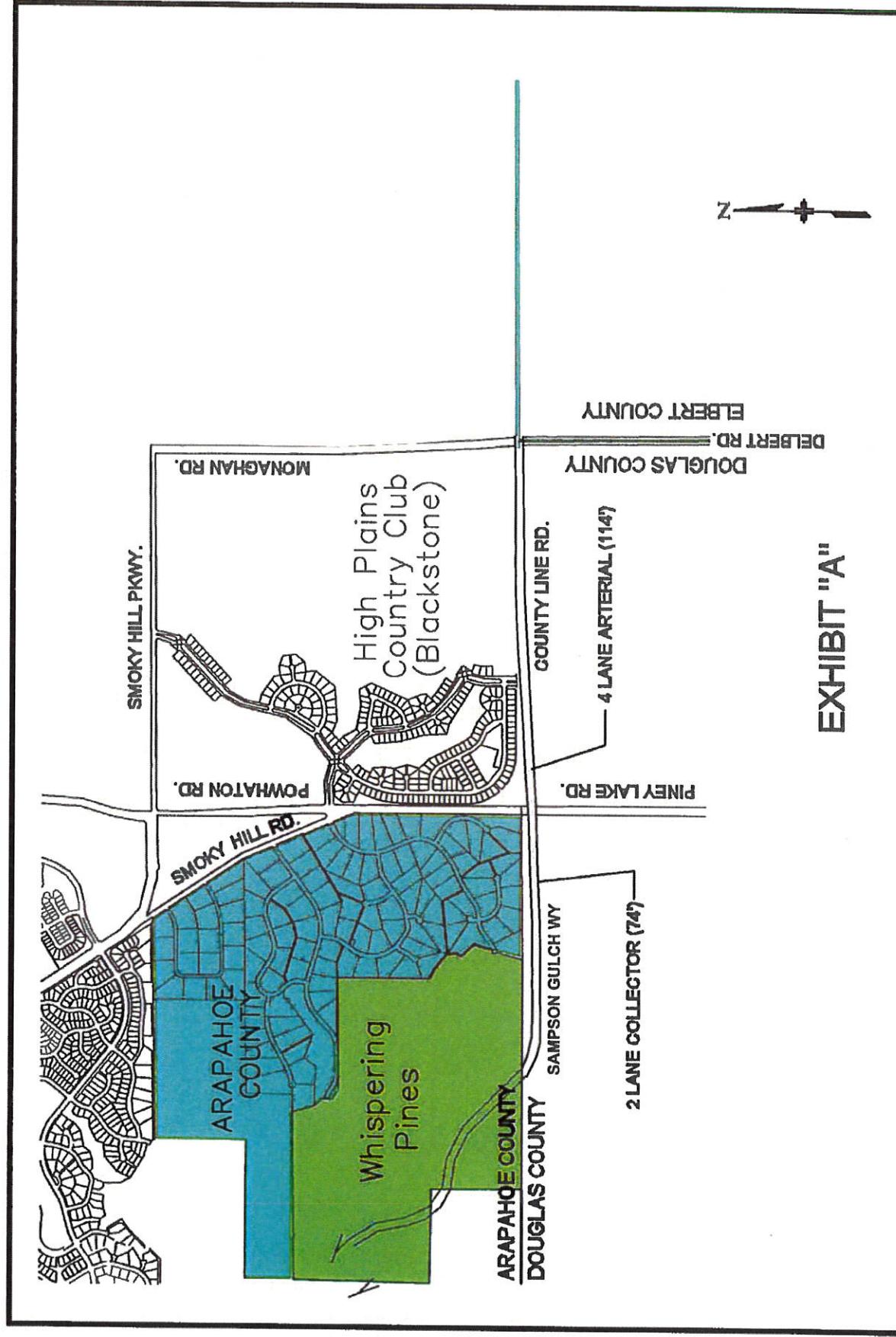
APPROVED AS TO LEGAL FORM:

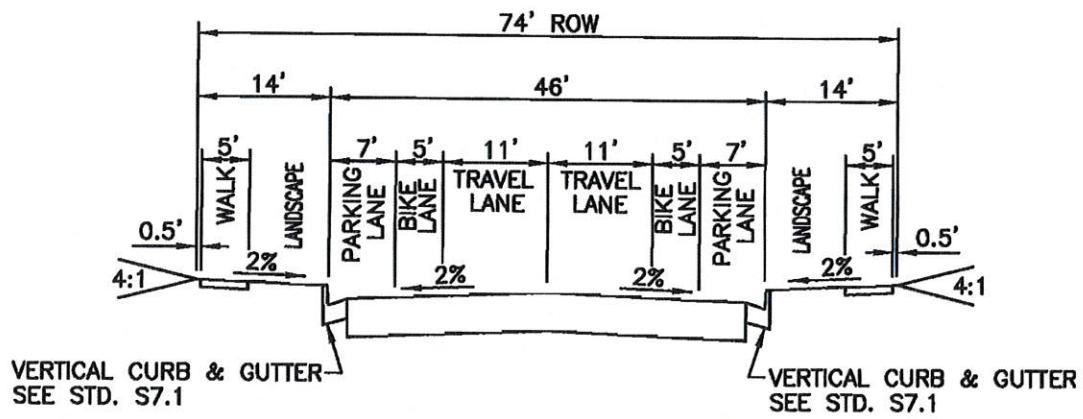
Lance Ingalls
Lance Ingalls
County Attorney

Date: 2/25/15

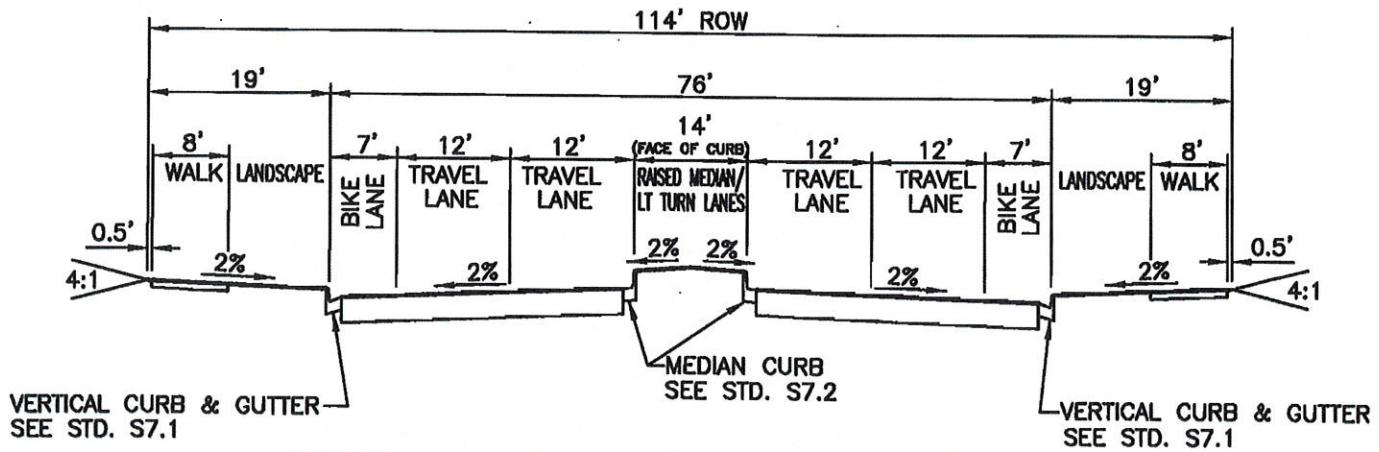
COUNTY LINE ROAD

EXHIBIT "A"





TWO LANE COLLECTOR
SAMPSON GULCH WAY



FOUR LANE ARTERIAL : RAISED MEDIAN

MEDIAN TURN LANE WIDTH = 10'
COUNTY LINE RD.

EXHIBIT 'B'