

Memorandum of Understanding Regarding County Line Road Construction and Maintenance between Douglas County and El Paso County

A Memorandum of Understanding to perform road construction and maintenance work inside of Douglas County and to maintain the same by El Paso County (hereinafter "Agreement" or "MOU") dated for reference this 18th day of February, 2014 between: **Douglas County**, by and through the Douglas Board of County Commissioners; and **El Paso County**, by and through the El Paso Board of County Commissioners, collectively referred to as **Parties**.

1. The Parties.

- a. Douglas County, Colorado, by and through Board of County Commissioners of Douglas County, (hereinafter "Douglas"), and
- b. El Paso County, Colorado, by and through the Board of County Commissioners of El Paso County, Colorado, (hereinafter "El Paso"), and

2. Purpose of Agreement and Authority.

- a. The purpose of the MOU is to define the roles, responsibilities and understandings of the Parties related to the construction and maintenance of the County Line Road (aka Palmer Divide Road) Improvement project, as generally depicted in Exhibit A, portions of which occur in both Douglas and El Paso County.
- b. The purpose of this project is to institute safety improvements along the corridor between I-25 and Furrow Road to include adding shoulders, revisions to the vertical profile and horizontal alignments, drainage improvements, providing turn lanes at key intersections and major reconstruction and widening of the intersection at Furrow Road.
- c. It is necessary for certain portions of private property in both El Paso and Douglas Counties to be acquired as right-of-way or easements for the County Line Road Project. El Paso will acquire all necessary right-of-way or easements within El Paso County and compensate the property owners for such acquisition. Likewise, Douglas will acquire all necessary right-of-way or easements within Douglas County and compensate the property owners for such acquisition. Douglas County grants permission for El Paso or its agents involved in the construction and maintenance activities to perform those activities in the acquired ROW and easements in Douglas County as required for the project or for future maintenance.

- d. Once completed, Douglas desires for El Paso to provide for continued maintenance along those portions of County Line Road, and El Paso desires to accept such maintenance responsibilities.
- e. El Paso County and Douglas County will continue current maintenance responsibilities along respective portions of County Line Road until such time as addressed in the future intergovernmental agreement.
- f. The Parties also recognize that the need for future agreements and modifications as to construction and maintenance responsibilities along County Line Road may arise, and the Parties agree there shall be a formal intergovernmental agreement in place to address the specifics in the future.

3. **Term and Termination.**

- a. This Memorandum of Understanding shall be deemed effective by the Parties from the date of execution of this document until such time it is either superseded by intergovernmental agreement or otherwise terminated by the Parties either explicitly or due to non-annual appropriation of funds toward this project.
- b. This Agreement shall terminate upon written agreement of the Parties, or may be terminated by any Party in the event that changes in Colorado state law or future conditions render this Memorandum of Understanding void or unnecessary.

4. **Obligations of the Parties and Consideration.**

- a. **El Paso.** El Paso County hereby agrees to acquire all necessary right-of-ways and easements in El Paso County for the County Line Road Project, to construct the County Line Road improvements both in Douglas County and El Paso County and further accepts continued maintenance responsibilities of this portion of the County Line Road upon completion of the PPRTA County Line Road Project
- b. **Douglas.** Douglas County hereby agrees to acquire all necessary right-of-ways and easements in Douglas County for the County Line Road Project and consents to El Paso County doing all work, necessary and implied, described in this agreement to construct, maintain and repair those portions of County Line Road which are located in Douglas County. Douglas County also agrees and consents to El Paso County maintaining the portions of County Line Road located in Douglas County for the duration of this agreement.

5. **Changes.** The Parties, from time to time, may request changes in the scope of services or maintenance responsibilities pursuant to this agreement. Such changes that are mutually agreed upon between the Parties shall be in writing, and upon execution shall become part of this Agreement. To be effective, all changes must be signed by the Parties.

6. **County Liability and Sovereign Immunity.** The Parties understand that liability of the Parties is controlled and limited by the Colorado Governmental Immunity Act ("CGIA"), C.R.S.

§ 24-10-101, *et seq.*, and that no provision of this Agreement is intended to limit or modify the application of immunity.

7. **Insurance.** The Parties shall at all times during the terms of this Agreement have and keep in force a liability insurance policy with a company licensed to do business in the State of Colorado, or operate a self-insurance fund.

8. **Governing Law/Forum/Interpretation.** This Agreement has been executed by the parties hereto on the day and year first above written and shall be governed by the laws of the State of Colorado. Venue for any civil action relating to this Agreement shall be in El Paso County, Colorado.

9. **Non-appropriation.** The financial obligations of the Parties as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available. This Agreement is automatically terminated on January 1st of the first fiscal year for which funds are not appropriated by the Parties.

10. **Third-Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating thereto shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person.

11. **Extent of Agreement.** This Agreement, with attachments thereto, represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral. Any amendments to this must be in writing and be signed by all of the Parties. If any portion of this Agreement is found by a court of competent jurisdiction to be void and/or unenforceable, it is the intent of the Parties that the remaining portions of this Agreement shall be of full force and effect.

12. **Assignability and Transfer.** No Party to this Agreement shall assign or otherwise transfer this Intergovernmental Agreement or any right or obligation hereunder without the prior written consent of the other Parties.

13. **Severability.** If any portion of this Agreement or application thereof to any Party or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provision or applications, and to this end the provisions of this Agreement are declared to be severable.

14. **Waiver.** The waiver of any breach of a term, provision, or requirement of this Agreement shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

15. **Headings.** The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or

intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

16. **Force Majeure.** No Party shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages, and only to the extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of or were not aggravated by, the acts or omissions of the non-performing or delayed party.

THE PARTIES HERETO HAVE EXECUTED THIS MEMORANDUM OF UNDERSTANDING.

Board of County Commissioners
of the County of Douglas, Colorado

By: Roger Partridge
Roger Partridge, Chairperson

Board of County Commissioners
of the County of El Paso, Colorado

By: Amy Lathen
Amy Lathen, Vice Chair

ATTEST:

Walter Williams
County Clerk & Recorder

The seal of the County of El Paso, Colorado, is a circular emblem. It features a central design surrounded by the words "COUNTY OF EL PASO, COLORADO" in a circular border. The seal is partially obscured by the signature and text of the County Clerk & Recorder.

