INTERGOVERNMENTAL AGREEMENT BETWEEN THE SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT AND BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO, SPECIFICALLY CONCERNING DRY CREEK OPERATIONAL IMPROVEMENTS

This Capital Project Implementation Agreement (the "Agreement") is made, effective as of this _____ day of _____, 2020 (the "Effective Date") by and between the **SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("SPIMD") and the Board of County Commissioners of the County of Arapahoe, State of Colorado ("Arapahoe County") and also referred to herein as the "Applicant"), and hereinafter collectively referred to as the "Parties."

WHEREAS, the Parties are legally empowered under their respective organizational documents and the laws of the State of Colorado to enter into this Agreement; and

WHEREAS, the Parties agree that there is a need to improve the segment of Dry Creek Road between the northbound I-25 off-ramp and the Clinton Street/Inverness Drive West intersection, which includes: conversion of the eastbound right-only lane to a through-right lane that continues east to the Inverness Drive East intersection and an added eastbound right turn lane to Inverness Drive West, a new westbound left turn lane to Dry Creek Light Rail Transit Station access, sidewalk improvements along the south side of Dry Creek Road, signage and pavement markings (the "Project"); and

WHEREAS, the Project was recommended in the I-25/Dry Creek Road Interchange and Corridor Study completed in 2016, and partially funded and supported by SPIMD; and

WHEREAS, the South I-25 Urban Corridor Transportation Management Association (the "TMA") and its member jurisdictions have developed a strategy for mitigation of impacts within an area referred to as the South I-25 Urban Corridor (the "Corridor") and the Corridor's transportation system, said strategy having been articulated in the Vision 2025 Plan adopted by the TMA and its member jurisdictions; and

WHEREAS, the commercial areas within the Corridor desired to establish a means of equitably mitigating their proportionate development impacts on the area's regional transportation system, and SPIMD has been formed specifically to provide a mechanism for commercial properties to voluntarily impose a property tax on themselves to raise funds for this purpose; and

WHEREAS, SPIMD has, to date, invested or committed approximately \$50 million in funding to partner with local jurisdictions in implementing qualified capital improvements within the Corridor, inclusive of a commitment of up to \$36 million in matching funds to support the TMA's Vision 2025 Plan Capital Projects program; and

WHEREAS, SPIMD levies a property tax on commercial properties within the Corridor to provide

such funding; and

WHEREAS, the Parties have in turn agreed to acknowledge that SPIMD funds are in part considered as mitigation for transportation impacts attendant to new commercial development within the Corridor; and

WHEREAS, the Applicant has, through the application attached here to as **Exhibit A** requested review of the Project by the TMA for conformance with the TMA's Vision 2025 Policy and criteria, and the currently adopted TMA multi-year capital project funding plan, and has received a favorable response from SPIMD; and

WHEREAS, based on the foregoing, SPIMD hereby agrees to financially participate in the Project conditioned on adherence to the terms and conditions set forth below; and

WHEREAS, the Applicant has requested SPIMD's funding assistance for this Project in the amount of **Seven Hundred Forty-Two Thousand Dollars** (\$742,000.00); and

WHEREAS, the Applicant acknowledges that SPIMD's provision of such funds is conditioned upon said amount being credited proportionately as regional transportation system mitigation offsets for the commercial properties within SPIMD; and

WHEREAS, based on the foregoing, SPIMD hereby agrees to financially participate in the Project conditioned on adherence to the terms and conditions set forth herein; and

WHEREAS, the Parties have budgeted capital funding to perform their obligations under this Agreement; and

WHEREAS, the Parties wish to state herein their understanding as to how the Project will be financed and implemented; and

NOW THEREFORE, as full consideration for and in furtherance of the goals and intents and purposes of this Agreement, the Parties hereby agree as follows:

1. Purpose.

The purpose of this Agreement is to memorialize SPIMD's agreement to financially participate in the Project and to establish the process by which SPIMD's participation will be accomplished. The total eligible costs associated with the Project, including but not limited to design, acquisition of necessary right-of-way and easements, construction management and construction (collectively "Eligible Project Costs") are currently estimated at Four Million Five Hundred Twenty Thousand Dollars (\$4,520,000.00).

The actual Eligible Project Costs expended for the Project shall be the "Actual Project Cost." Eligible Project Costs shall include right of way acquisition costs, payment of contractors,

including consultants, contracted to perform the Project, pursuant to their contracts and the Eligible Project Costs shall not include the overhead or other internal costs and expenditures of any participant.

2. SPIMD Contribution.

SPIMD's contribution toward the completion of the Project shall be, as matching funds to dollars contributed by both Arapahoe County ("County") and the City of Centennial ("Centennial"), an amount up to and not to exceed Seven Hundred Forty-Two Thousand Dollars (\$742,000.00) (the "SPIMD Contribution").

3. Allocated Shares of Estimated Project Costs.

The Estimated Project Costs and agreed upon allocated shares of the same, between the Parties and other participants, are set forth in the table below.

The Estimated Project Costs are shown in table below

	Participant	Participant
Participant	Share of the	Percentage of the
	Estimated	Estimated
	Project Cost	Project Costs
Applicant - Arapahoe County (Applicant)	\$371,000	8.2%
City of Centennial	\$371,000	8.2%
Inverness Metropolitan District	\$371,000	8.2%
Federal funds through DRCOG	\$2,665,000	59%
SPIMD	\$742,000	16.4%
Total Estimated Project Costs	\$4,520,000	100%

The Applicant certifies that the above funding sources and amounts of funds are the only sources and amounts available to fund the Estimated Project Costs which are eligible for reimbursement from SPIMD in accordance with this Agreement. The Applicant acknowledges and agrees that if additional funding sources or amounts are made available to the Inverness or Centennial for the Project, then SPIMD's financial commitment will be reduced proportionately based on percentages shown in the table above. Nevertheless, in the event that additional funds from another source are required to complete the project because the Actual Project Costs exceed the Estimated Project Costs, SPIMD's contribution shall not be reduced as provided in the foregoing sentence.

4. SPIMD and the Applicants Project Reimbursement Payments.

The Applicant shall set aside Project funds equal to its share of the Estimated Project Costs into an account designated for the Project and may elect to issue purchase orders for the Project to the appropriate party. Payment requests shall be made in accordance with the terms of this Agreement. Within fifteen (15) days following SPIMD's receipt of the Applicant's confirmation that they have entered into an agreement to complete the Project, SPIMD shall deposit the entire SPIMD Contribution into an account earmarked for the Project (the "SPIMD Project Fund").

SPIMD has the option of reimbursing the Applicant based on monthly draws from the SPIMD Project Fund for its pro-rata share of the monthly Actual Project Costs based on the percentages shown in the table in Paragraph 3 above, with SPIMD reimbursement payment requests beginning in the spring of 2020 and one hundred percent (100%) of the total SPIMD reimbursement being collected before December 31, 2022; provided that SPIMD's final installment shall not be paid unless and until the completion and close out of the Project and a final accounting of the Actual Project Costs as required by Paragraph 9, below. The Applicant shall maintain full and complete records of Actual Project Costs incurred in accordance with generally accepted accounting principles and will assure that SPIMD shall have the right to audit the Applicant's financial records related to the Project during construction of the Project and up to three (3) years after completion of the Project.

SPIMD shall have no obligation to commit any additional funds in the event that the Actual Project Costs exceed the Estimated Project Costs. This Agreement establishes SPIMD's maximum contribution toward the completion of the Project. Any unspent portion of the SPIMD Project Fund remaining at the completion of the Project shall be retained by SPIMD.

In the event the Project Costs do in fact exceed the Project Cost Estimate, the County, Inverness Metro District, and Centennial shall in good faith endeavor to appropriate additional funds in excess of their respective contributions in order to fund the total amount of the Project Costs above the Project Cost Estimate; provided, however, the Parties expressly understand and agree that nothing in this Agreement in any way obligates any of the Parties to budget, appropriate, transfer, pay or otherwise contribute to the Project an amount in excess of the contributions set forth herein.

5. <u>Project Implementation.</u>

The Applicant will coordinate the implementation and oversight of the Project, inclusive of the retention of any necessary consultants and contractors to perform the work necessary to complete the Project.

The Applicant shall cause the Project to be completed in accordance with the applicable laws, rules, and regulations of all governmental entities having proper jurisdiction over the Project.

All invoices for payment of Actual Project Costs, including a final invoice resulting from the completion of the Project or termination of a contract with the contractor for the Project, shall be directed to the Applicant and the Applicant shall distribute them together with a pay request approved by the Applicant Representative (identified in Paragraph 11.A) to the SPIMD

Representative (identified in Paragraph 11.B). Each pay request submitted by the Applicant Representative to the SPIMD Representative shall be accompanied by the following: (1) Project invoices or other documentation of Actual Project Costs; and (2) such other documentation supporting or explaining the pay request as the Applicant Representative may choose to include at its discretion. The Applicant Representative may submit pay requests to the SPIMD Representative either in hard copy or electronically (via email). Upon receipt of each pay request, the SPIMD Representative will review the same and provide approval of the pay request or provide comments on the pay request within fifteen (15) calendar days. If the SPIMD Representative does not provide written comments on the pay request within said fifteen (15) calendar day review period, then the pay request shall be deemed approved. Following approval of each pay request, SPIMD shall immediately cause funds to be disbursed from the SPIMD Project Fund to the Applicant. As set forth above, SPIMD shall have no obligation to commit any funds in excess of the SPIMD Contribution.

The Applicant shall keep accurate records of the progress of the Project and the Applicant shall provide status reports to the SPIMD Representative identified in Paragraph11.B. on a regular basis, (a minimum of every other month after execution of this Agreement), including progress updates, notice of any problems related to the Project and a record of the payments made to contractor(s). Said status reports shall include updates to the Actual Project Costs expended and the remaining costs projected to be expended through the Project completion, and shall note any variances, (change orders), from the Estimated Project Costs, as well as any adjustments to the time schedule for Project completion.

6. <u>Character of SPIMD Role.</u>

SPIMD will be responsible for working with the Applicant to the extent necessary, to assist in acting as a Project liaison with the Project area stakeholders in order to assist in keeping affected businesses and local governments appraised of Project issues, and assist in receiving and conveying feedback to the Applicant in order to assist in resolving any real or perceived issues with the Project's progress; provided that SPIMD shall have no obligation to complete, or liability for or arising from the Project.

SPIMD shall not be liable for any claims, demands, losses, damages, expenses, injuries, and liabilities arising from the death or injury of any person or persons, including any claims of the Applicant or other funding entities, or from any damage to or destruction of property caused by or in connection with the Project, or any negligent act or omission of the Applicant, any other funding entities or the Project contractor.

To the extent allowed by the law of the State of Colorado, including but not limited to Article X, Section 20 of the Constitution of the State of Colorado, and subject to the Governmental Immunity Act (24-10-101, *et seq.* Colorado Revised Statutes ("C.R.S.")), the Applicant shall indemnify, save and hold harmless SPIMD, its officers, employees and agents, against any and all claims, damages, liability and court awards, including all costs, expenses, and attorney fees incurred as a result of any negligent act or omission of the Applicant, or its employees, agents, subcontractors or assignees related to this Agreement or the completion of the Project.

7. <u>Good Faith and Fair Dealing.</u>

SPIMD and the Applicant agree that the Applicant shall have a fiduciary duty to SPIMD in the performance of this Agreement. This fiduciary duty accepted by the Applicant is limited solely to the Applicant's use and expenditure of the SPIMD funding contribution to the Project in accordance with this Agreement, and subject to this limitation, such fiduciary duty shall include, but not be limited to, the highest duties of good faith, fair dealing, disclosure of all information to SPIMD as described herein, avoidance of conflicts of interest, and avoidance of the appearance of conflicts of interest in carrying out the goals and objectives of this Agreement.

8. Insurance.

SPIMD and the Applicant shall insure themselves separately against liability, loss and damages arising out of the operation of and performance under this Agreement and the construction, use or operation of the Improvements.

9. Term of Agreement and Termination.

This Agreement shall be effective as of the Effective Date identified above and shall terminate upon the completion and close out of the Project and a final accounting of the Actual Project Costs being provided by the Applicant to SPIMD; provided that, in the absence of the prior and express written consent of SPIMD the obligation to cause funds to be disbursed from the SPIMD Project Fund to the Applicant shall terminate on **December 31, 2023** (subject to annual budget and appropriations in accordance with C.R.S. Sections 29-1-101, *et seq.* Colorado Local Government Budget Law), whether or not the Project has been completed. It is the Parties intent to appropriate the funds described in this Agreement. However, pursuant to C.R.S. Section 29-1-110, any financial obligations of the Parties contained herein that are payable after the current fiscal year are contingent upon funds for the purpose being appropriated, budgeted and otherwise made available on an annual basis.

Either party shall have the right to terminate this Agreement after thirty (30) days written notice to the other party in the event of a default which is not cured within twenty (20) days after delivery of the written notice of default or non-appropriation of funding for the next fiscal year. Termination for default shall not be effective if reasonable action to cure the breach has been taken by the defaulting party before the effective date of the termination, and such actions are pursued diligently to a successful completion within twenty (20) days from inception of the actions. If such actions are not successful within said period of time, the non-defaulting party shall have the right to terminate this Agreement upon written notice to the other party.

In the event of termination, the Applicant shall settle all accounts with SPIMD related to the Project and then remit to SPIMD its pro rata share of any monies recovered from or refunded by the Project contractor in accordance with the percent contributions shown on the table in Paragraph 3 above.

The Applicant's obligation to share pro-rata Project cost savings with SPIMD shall be done in accordance with the percentage contributions shown in the table in Paragraph 3 above, and based on the Applicant's accounting obligations, the Applicant's assurance of compliance with applicable laws, and the Applicant preservation of records pertaining to the Project shall survive termination of this Agreement.

10. <u>Assignment</u>.

Neither Party shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other Party. Any attempt to assign this Agreement in the absence of such written consent, shall be null and void ab initio.

11. Project Management.

A. Applicant Representative.

The Applicant hereby designates: <u>Cathleen Valencia</u>, <u>P.E.</u>, <u>Arapahoe County Public Works Capital Improvement Program Manager</u> (with an email address of CValencia@arapahoegov.com) as the Applicant's representative to coordinate all communication with SPIMD related to the Project, including issues arising under this Agreement.

B. <u>SPIMD Representative</u>.

SPIMD hereby designates: <u>Pat Mulhern, P.E.</u>, (with an email address of pat@mulhernmre.com) as SPIMD's representative to coordinate all communication with the Applicant related to the Project, including issues arising under this Agreement.

12. Miscellaneous.

It is the intention of the Parties that the Applicant shall be, and remain, an independent contractor. The Parties do not intend and nothing contained in this Agreement shall be deemed to create a partnership, co-tenancy, joint venture or agency of any kind.

Any Party in default under this Agreement shall pay the reasonable attorney's fees of the other party incurred in order to enforce its rights under this Agreement.

This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the parties to this Agreement, the exclusive venue for dispute resolution shall be the District Court for and in Arapahoe County, Colorado.

This Agreement shall inure to the benefit of, and be binding upon the parties to this Agreement and the irrespective successors and permitted assigns. This Agreement is solely between and for the benefit of SPIMD and the Applicant, and no design consultant, contractor, any subcontractor nor any other person is a third-party beneficiary to or under this Agreement.

This Agreement contains the entire agreement of the Parties with respect to its subject matter. Any amendments or modifications to this Agreement must be in writing executed by the Parties in order to be valid and binding. Each Party to this Agreement represents and warrants that they have made full disclosure of any and all contingencies, conditions, or reimbursement agreements related to their financial participation in the Project as described in Paragraph 3 above.

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.

SPIMD and the Applicant are political subdivisions of the State of Colorado and, as such, (1) any and all financial obligations described hereunder are subject to annual budget and appropriations requirements, and (2) no consultants, contractors or subcontractors shall have lien rights against the Parties, nor against any property lying within the boundaries of the Parties in the event of nonpayment of any amount due under this Agreement.

Article X, Section 20/TABOR. The Parties understand and acknowledge that Arapahoe and SPIMD is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR as no future appropriations of funds beyond the current fiscal year is anticipated or expected. Notwithstanding anything in this Agreement to the contrary, all payment obligations of the Parties are expressly dependent and conditioned upon the continuing availability of funds for such party beyond the term of the party's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the individual paying party and other applicable law.

The Applicant and SPIMD, and their respective elected officials, directors, officials, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement the monetary limitations or any other rights immunities or protections afforded by the Colorado Governmental Immunity Act, §§24-10-101 *et seq.*, C.R.S., as the same may be amended from time to time.

No elected official, director, officer, agent or employee of SPIMD or the Applicant shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Capital Project Implementation Agreement as of the day and year first above written.

SOUTHEAST PUBLIC IMPROVEMENT METROPOLITAN DISTRICT

Walter A. Koelbel, President

APPLICANT - ARAPAHOE COUNTY

BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY

Bryan Weimer, Director Arapahoe County Department of Public Works Pursuant to the Authority of Board of County Commissioner Resolution #200110

EXHIBIT A

Attached is a copy of Application for SPIMD Capital Funding	



VISION 2025 PROJECT APPLICATION



		SPIMD	CAPITAL FUNDING	ì		
Project Name:						Project Type:
Submitted By:						☐ Major (Zone)
Date:						☐ Special (Annual)
TMA Zone:						
Brief Summary of Project:						
Please also provide a more detailed description of the project, attached with the application.						
		ESTIMATED	FUNDING SCHED	ULE		
Year	2019	2020	2021	2022	2023-2025	TOTAL
Total Project Design						
Total Project Construction						
TOTAL						
		PROJECT	REVENUE SOURC	E		
Year	2019	2020	2021	2022	2023-2025	TOTAL
Local Gov't:						
Local Metro						
District:						
Other:						
SPIMD (up to equal match of local government)						
TOTAL						



VISION 2025 PROJECT APPLICATION



		SPIMD	CAPITAL FUNDING	ì		
Project Name:						Project Type:
Submitted By:						☐ Major (Zone)
Date:						☐ Special (Annual)
TMA Zone:						
Brief Summary of Project:						
Please also provide a more detailed description of the project, attached with the application.						
		ESTIMATED	FUNDING SCHED	ULE		
Year	2019	2020	2021	2022	2023-2025	TOTAL
Total Project Design						
Total Project Construction						
TOTAL						
		PROJECT	REVENUE SOURC	E		
Year	2019	2020	2021	2022	2023-2025	TOTAL
Local Gov't:						
Local Metro						
District:						
Other:						
SPIMD (up to equal match of local government)						
TOTAL						

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L.	Is this project within	the SPIMD boundaries?
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- 2. Have Stakeholders been notified of this application?
- 3. Are comments from Stakeholders attached? *

Date

*Include letter of support from Stakeholders when submitting application. It is not mandatory to have letters of support, just confirmation that all Stakeholders have been notified.

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	PROJECT LOCATION:	
Brief Description of Location:		
Please send a picture of the project lo	cation with the application.	
CICNATUDEC*		
	SIGNATURES*	
Signaturo		
Signature		
Name and Title		

*The application must be signed by the BOCC Chair or City Mayor. No exceptions.

NOTE: This form is to be submitted to the Denver South Transportation Management Association (TMA) for its review and recommendation to SPIMD.

	CONDITIONS TO FUNDING		
1. Is this project within the SPIMD boundaries?			
2. Have Stakeholders been notified of this application?			
3. Are comments from Stakeholders attached? *			
*Include letter of support from Stakeholders when submitting ap	oplication. It is not mandatory to have letters of support, just confirmation	n that all Stakeholders have been notif	ied.
	PROJECT LOCATION:		
Brief Description of Location:			
This project is located at the I-25/ Dry Creek Rd Interc	change. The project area includes Dry Creek Rd eastbound f	from northbound I-25 off ramp to	o Inverness Drive Ea
Please send a picture of the project location with the application	n.		Ħ
	SIGNATURES*		
Signature			
Signature Name and Title	Baker Chair, B	066	

*The application must be signed by the BOCC Chair or City Mayor. No exceptions.

NOTE: This form is to be submitted to the Denver South Transportation Management Association (TMA) for its review and recommendation to SPIMD.



Public Works and Development

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BRYAN D. WEIMER, PWLF

Director

September 13, 2019

SPIMD Review Committee

RE: Dry Creek Operational Improvements project description

Dear SPIMD Review Committee,

Dry Creek Road is an important transportation corridor serving the growing business, commercial, and residential areas east and west of the I-25 corridor. Transportation improvements are needed along the corridor to address operations, safety, and local accessibility. Efficient access to/from I-25 is critical to the economic activity centers and residential areas surrounding the freeway in Arapahoe County and the City of Centennial. The I-25/Dry Creek Road interchange is an important connection to the regional transit links served by the Dry Creek LRT Station.

Traffic operations are congested along eastbound Dry Creek Road, particularly during the AM peak periods, with low average travel speeds, poor levels of service, and long vehicle queues approaching the signalized intersections east of I-25. INRIX speed data for the Dry Creek Road corridor east of I-25 shows that over the last four years speeds in both directions have fallen dramatically with average speeds below 20 mph spreading beyond the peak hours and occurring throughout the day.

Substantial eastbound traffic weaving maneuvers occur in the short segment of Dry Creek Road between the northbound I-25 off-ramp and the Clinton Street/ Inverness Drive West intersection. The eastbound lane drop at Inverness Drive West contributes to abrupt lane changes and weaving for drivers continuing east on Dry Creek Road.

The Dry Creek Operational Improvements project converts the eastbound right-only lane to a through-right lane that continues east to the Inverness Drive East intersection. Instead of an eastbound right turn lane, drivers could use the lane to continue through the intersection before merging at the Inverness Drive East intersection, approximately 1,500 feet further east. The vast majority of the traffic turning right from the Northbound I-25 off-ramp are continuing east on Dry Creek road past the Clinton Street/ inverness Drive West intersection. The project will also include an added eastbound right turn lane to Inverness Drive West.

This project will improve operational performance, improve vehicular safety and reduce congestion with less weaving maneuvers along Dry Creek Road between I-25 and Inverness Drive West.



Arapahoe County collaborated with CDOT, City of Centennial, and the Denver South TMA on the I-25/Dry Creek Road Interchange and Corridor Study, completed in 2016, and continues to work with agency stakeholders to prepare for the implementation of improvements recommended by the study.

Respectfully,

Cathleen Valencia, PE Arapahoe County Public Works Capital Improvement Program Manager

