



Board Summary Report

Date: August 20, 2019

To: Arapahoe County Board of County Commissioners

Through: Bryan Weimer, Director
Public Works and Development

Through: Chuck Haskins, PE, Division Manager
Public Works and Development – Engineering Services Division

From: Sue Liu, PE, Engineer III
Engineering Services Division

Case name: E-470 Widening from Quincy to I-70
Arapahoe County Case No. E19-033

Subject: Approval and Acceptance of the Minor Modifications to the County Standard Stormwater Facility Maintenance Agreement

Purpose and Recommendation:

The purpose of this report is to request the Board authorize the minor modifications to the County Standard Stormwater Facility Maintenance Agreement (O&M Agreement) and to authorize Bryan Weimer, Director, Department of Public Works and Development to execute the specific agreement on behalf of the Board and record the fully executed Agreement.

Background:

The E-470 Public Highway Authority (Authority) is in the process of widening E-470 between Quincy Avenue and I-70 to mitigate traffic congestion. There are 7 water quality facilities proposed for the project within Arapahoe County Jurisdiction, which requires the drainage easements dedication to allow the County the right to enter the property for inspection and maintenance if needed. The Authority would prefer to use a modified Operations and Maintenance Agreement and a MOU instead of the drainage easements and the form of the Operations and Maintenance Agreement recently approved by the Board to permit the water quality storm water facilities and to grant the County the access rights. The Authority submits the following reasons to justify this request:

1. The Authority operates a toll road and have a vested and financial interest in ensuring adequate maintenance of the water quality features on the road.
2. Failure to provide adequate maintenance in areas adjacent to the road would be counter-productive to Authority's strategic plan.
3. The Authority takes seriously its responsibility for maintenance, including water quality, and provides an adequate maintenance budget every year.



Board Summary Report

4. The Authority has an asset management program that requires regular inspection and maintenance of water quality features within its property.
5. The Authority is not a private developer that builds water quality ponds then conveys the maintenance responsibility to a third party who may fail to perform adequate maintenance.
6. Authority is a fellow government agency and an Arapahoe County Commissioner serves on the Board of Directors. The Board ensures staff are held accountable with respect to local permitting requirements and compliance.
7. The Authority is a party to multiple IGA's with Arapahoe County over a period of over 20 years and has a proven track record of fulfilling our legal responsibilities.
8. The Authority holds an MS-4 permit for water quality in the Cherry Creek Basin to the south of this location, and understands the importance of maintaining water quality and the repercussions of non-compliance.

Discussion:

On June 25, 2019, the Board approved the form Operations and Maintenance Agreement to be used for stormwater facilities on property not owned by the County. The Board's annual signature resolution then authorizes the Director of Public Works and Development to execute such Agreements on the Board's behalf.

Moreover, the County usually relies on that Agreement, which by its language conveys a right of access to the County to the stormwater facility, and a deed of easement for the facility itself. Since the Authority desires to modify the language of the Agreement to give the County a right of access to the facility in lieu of a formal easement, the County Attorney's office has recommended that the Board be requested to consent to the Agreement modifications.

The Agreement, as proposed by the Authority, still requires the Authority to maintain the stormwater facility and provides the County the necessary access, just not by formal easement. The MOU proposed by the Authority would authorize the water quality facilities on Authority property, commit to maintain the facilities and allow the County access to the facilities. However, since there would not be a recorded easement, there would not be anything to prevent the authority from unilaterally revoking the access rights allowed by the MOU.

Since the County Standard O&M Agreement is reflecting to the drainage easement, minor modifications are necessary for the MOU. The changes are highlighted below:

"3. To the extent of its rights therein, the Owner hereby grants, ~~bargains and conveys~~ to the County, and its officers, agents, and employees ~~access to an easement over~~ the Property ~~for access from public~~ rights-of-way, abutting private roadways, and/or private driveways, to the Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing the Facilities to the extent that Owner fails to do so and as necessary to ensure their proper working condition as outlined above".

Board Summary Report

Links to Align Arapahoe

To enhance the quality of life for citizens of Arapahoe County to address their basic needs.

Alternatives

Require the Authority to execute a formal easement which sites the water quality facilities and grants access to those facilities by easement.

Fiscal Impact

There is no fiscal impact related to this request.

Concurrence

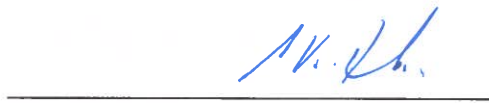
The modifications to the County Standard Stormwater Facility Maintenance Agreement was reviewed by the County Attorney's Office.

Actions Requested:

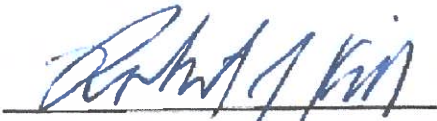
1. Approval and acceptance of the modifications to the County Standard Stormwater Facility Maintenance Agreement.
2. Authorize Bryan Weimer, Director, Department of Public Works and Development to execute the specific agreement on behalf of the Board.



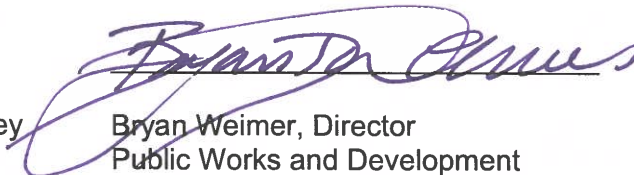
Sue Liu, PE, Engineer III
Engineering Services Division



Chuck Haskins, PE, Division Manager
Engineering Services Division



Robert Hill, Senior Assistant County Attorney
Attorney's Office



Bryan Weimer, Director
Public Works and Development

Attachments: Stormwater Facility Maintenance Agreement
MOU

STORMWATER FACILITY MAINTENANCE AGREEMENT

This Stormwater Facility Maintenance Agreement is entered into this 9th day of August, 2019, by and between the Board of County Commissioners of Arapahoe County, a political subdivision of the State of Colorado (the "County"), and the E-470 Public Highway Authority, a political subdivision of the State of Colorado (the "Owner"), and collectively referred to as the "Parties."

RECITALS

WHEREAS, the above-named Owner is the owner of the E-470 Public Highway ("E-470"), which is located, in part, within the County of Arapahoe, State of Colorado; and

WHEREAS, a Phase III Drainage Report, dated _____, and civil construction plans, dated _____ ("Plans") related to the construction of stormwater management facilities at locations 1 through 7 depicted on Attachment 1 hereto (the "Property") have been approved by the County; and

WHEREAS, said Plans provide for stormwater management facilities including such facilities intended to reduce, detain, convey, and manage stormwater runoff, and provide water quality benefits (collectively referred to as "Facilities"); and

WHEREAS, the Facilities shown on the Plans shall be constructed and adequately maintained by the Owner in a manner that allows for the Facilities to function in accordance with the approved Plans; and

WHEREAS, the County requires that the Owner submit an Operation and Maintenance Site Plan ("O&M Site Plan") as specified in the Arapahoe County Stormwater Management Facility Operation and Maintenance Manual attached hereto as "Exhibit A" (the "Arapahoe County Stormwater Management Manual"); and

WHEREAS, Standard Operating Procedures, ("SOPs") outlining maintenance requirements for Water Quality Facilities have been prepared and are referenced in Arapahoe County Stormwater Management Manual and hereby are incorporated herein by this reference; and

NOW, THEREFORE, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The Owner shall inspect and maintain the Facilities as described in the Plans and Exhibit A to ensure that such Facilities are and will remain in proper working condition in accordance with the Arapahoe County Stormwater Management Manual and other applicable legal requirements.

2. The maintenance of the Facilities shall be completed in accordance with the SOPs for the appropriate Facility and the Owner shall promptly perform all needed maintenance and repairs and shall document maintenance as outlined in the applicable SOP.
3. To the extent of its rights therein, the Owner hereby grants to the County, and its officers, agents, and employees access to the Property from public rights-of-way, abutting private roadways, and/or private driveways, to the Facilities for the purpose of inspecting, operating, installing, constructing, reconstructing, maintaining, repairing or replacing the Facilities to the extent that Owner fails to do so and as necessary to ensure their proper working condition as outlined above.
4. In the event the Owner fails to properly maintain the Facilities within thirty (30) days after written notice by the County of such deficiencies to the Owner, the County, or its designated representative, may enter upon the Property and take whatever steps it deems necessary to maintain or repair the Facilities and bill the Owner for the reasonable expense thereof, and who shall be responsible to reimburse the County for such expense. If the Owner's failure to properly maintain the Facilities could cause damage to property, loss of life or a violation of a Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer System (MS4) Permit, the County, or its designated representative, may take immediate action, without notice to the Owner, to maintain or repair the Facilities. It is expressly understood and agreed that the County, or its designated representative, is under no obligation to maintain or repair the Facilities, and in no event shall this Agreement be considered to impose any such obligation on the County.
5. The Owner agrees that it will not at any time dedicate the Facilities to the County or another public entity without the County's written consent, nor will it subdivide or convey the Property without a covenant providing that a proportionate share of the cost of maintenance and other costs associated with the obligations and duties contained herein runs with each subdivided part of the original tract or parcel of land.
6. In an event of emergency involving the Facilities, the County, its officers, agents, and employees may enter immediately upon the Property and take whatever reasonable steps it deems necessary to mitigate the emergency. The County shall notify the Owner of such emergency and entry as soon as possible but in no event later than twenty-four (24) hours after such entry. Alternatively, the County may notify the Owner by phone to take whatever reasonable action is necessary within a specified period of time. Should the Owner fail to respond, or should the Owner inform the County that it intends not to respond within the specified period of time, the County, its officers, agents, and employees may enter immediately.
7. The County shall not pay and shall not be required to pay any compensation at any time for its use of the Property in any way necessary for the inspections and maintenance of the Facilities, including access to the Facilities.
8. In the event the County, pursuant to this Agreement, performs work or expends any funds reasonably necessary for the maintenance or repair of the Facilities, including labor, equipment, supplies and materials, the Owner agrees to reimburse the County, or its

designated representative, within thirty (30) days after the County gives the Owner written notice of such expense. If the Owner or its successors or assigns fails to make timely payment as required herein, interest on such payment shall accrue at the rate of 1½ % per month until paid in full.

9. Any amount owed to County under the terms of this Agreement and not paid within thirty (30) days of the date of notification shall be the joint and several obligation of any owner of record of the Property or any portion thereof served by the Facilities and any successors in interest to such owner on the date such maintenance or repair was performed.
10. To the extent permitted by law, the Owner, its successors, and assigns shall indemnify and hold harmless County, its officers, agents, and employees for any and all damages, accidents, casualties, occurrences or claims which arise or are asserted against the County arising out of or resulting from the construction, presence, existence, maintenance, or use of the Facilities.
11. The Owner shall notify the County when the Owner transfers its interest in the Property or any portion thereof.
12. The responsibilities and obligations of the Owner shall constitute a covenant running with the land, and shall be binding upon all present and subsequent owners, their administrators, executors, assigns, heirs, and any other successors in interest so long as they own an interest in the Property of any portion thereof served by the Facilities.
13. The Owner acknowledges that any approved final site plan and/or final plat shall include the Drainage Maintenance Standard Note as specified in the Arapahoe County Land Development Code, the Development Application Manual, or other applicable County code, regulation, or duly adopted development policy. If the Facilities are not properly maintained, the County may provide necessary maintenance and assess the maintenance cost to the owner of the property. Failure to abide by the provision of such Note shall constitute a Zoning Violation, as defined in the Arapahoe County Land Development Code.
14. This Agreement shall be recorded in the Arapahoe County Clerk and Recorder's Office.
15. In the event either of the Parties hereto files a law suit to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable costs and attorney fees.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the County and Owner have executed this Agreement on the date set forth above.

OWNER: E-470 Public Highway Authority
By: Tim Stewart
Name: Tim Stewart
Title: Executive Director

State of Colorado }
 }
 }s.s.
County of }
 Arapahoe

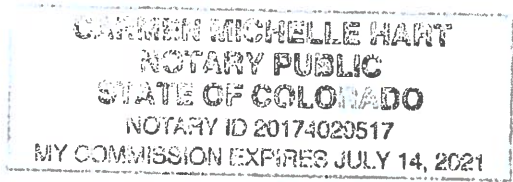
The foregoing instrument was acknowledged before me this 9 day of Aug, 2019, by _____, as _____ of E-470 Public Highway Authority.

My commission expires July 21, 2021. Witness my hand and official seal.

Carmen Hart
Signature
Carmen Michelle Hart
Name of Notary

Address of Notary

(SEAL)



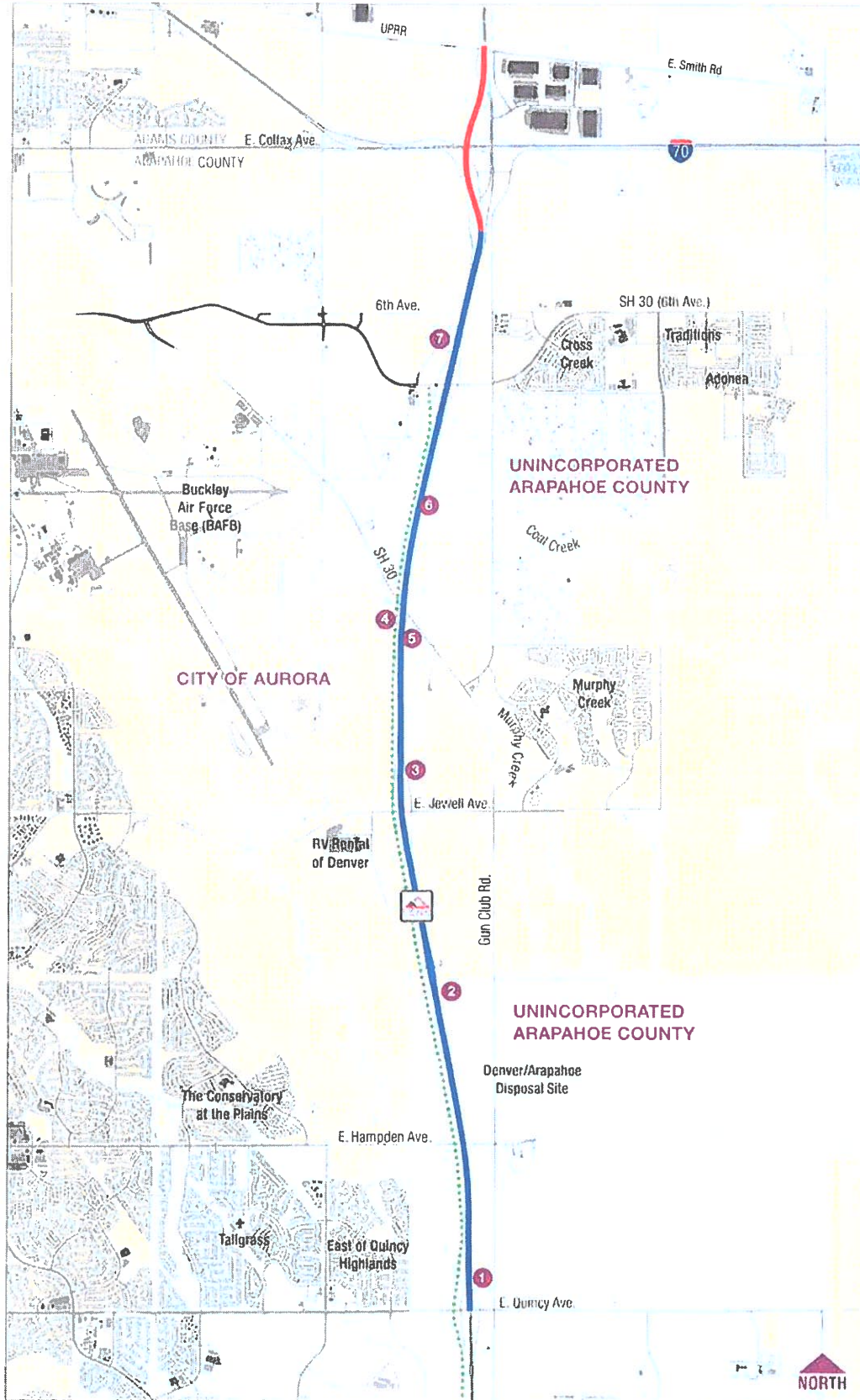
For the Board of County Commissioners:

Bryan D. Weimer
Director, Department of Public Works and Development
Pursuant to Resolution No. _____

E-470 ROAD WIDENING PROJECT:

CONTRACT NO. EN-18 WDES-1

QUINCY AVENUE TO I-70 PERMANENT WATER QUALITY MAP



- 3 lane ultimate section (both directions)
- Regional Trail
- 4 lane ultimate section (both directions)
- Permanent water quality facility



E-470 Public Highway Authority
22470 E. 6th Parkway, Suite 100
Aurora, CO 80018
303.537.3700 Phone
303.537.3472 Fax

Adams County
Arapahoe County
Aurora, CO
Brighton, CO
Commerce City, CO
Douglas County
Parker, CO
Thornton, CO

August 9, 2019
Bryan Weimer, Director, Department of Public Works and Development
Arapahoe County
6924 South Lima Street
Centennial, Colorado 80112

**Subject: E-470 Road Widening: Quincy Avenue to I-70
Water Quality Facilities Access – Letter Agreement**

Dear Mr. Weimer:

Introduction.

The E-470 Public Highway Authority (the “Authority”) is in the process of widening E-470 between Quincy Avenue and I-70 to mitigate traffic congestion and maintain a LOS C. The project will begin construction in July 2019 and be completed by December 2020. The Contractor selected for the project is the SEMA-Kraemer Joint Venture.

Water Quality Ponds.

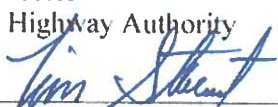
There are 7 water quality ponds planned for the project that lie within the SEMSWA/Arapahoe County jurisdiction as shown on the attached map. Following review of the design plans, SEMSWA issued a permit for construction dated June 20, 2019.

Maintenance Commitment.

The Authority commits that the water quality ponds within its property boundaries will be maintained in compliance with MS-4 permit standards. The Authority currently maintains similarly designed ponds elsewhere along E-470 within the Authority’s own MS-4 permit area and has historically budgeted adequate funding to ensure adequate levels of maintenance.

Access Permit.

The Authority agrees to provide access to the County, and its officers, agents, and employees to inspect the ponds as needed. The Authority will provide the County with a no fee Annual Access Permit so that County personnel have authority to access Authority property as necessary to access the water quality ponds and perform their statutory duties related thereto.

By:
Tim Stewart
Executive Director
E470 Public Highway Authority
Signature: 
Date: 8/9/19

By:
Bryan Weimer,
Director of Public Works and Development
Arapahoe County
Signature: _____
Date: _____



Acceptance of Stormwater Facility Maintenance Agreement

RESOLUTION NO. _____ It was moved by Commissioner _____ and duly seconded by Commissioner _____ to approve and accept, upon recommendation of the County's Case Engineer and Director of the Public Works and Development Department, the modifications to the County Standard Stormwater Facility Maintenance Agreement.

The Agreement shall be used in connection with Arapahoe County Case No. E19-033, and known as E-470 Widening from Quincy to I-70, and are accepted for the purposes expressed in the instrument.

Unless expressly stated in the instrument, Arapahoe County does not accept any interest in the property, including any responsibility for maintenance, repair, decontamination, cleanup, or hazardous material response on any portion of the real estate other than the improvements installed by or for Arapahoe County.

Authorization is hereby given to the Director of the Department of Public Works and Development to execute the subject agreement on behalf of the Board of County Commissioners.

VOTE

The vote was:

Commissioner Baker,; Commissioner Conti,; Commissioner Holen,; Commissioner Jackson, ;
Commissioner Sharpe,.

The Chair declared the motion carried and so ordered.