

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE E-470 PUBLIC HIGHWAY AUTHORITY,
THE SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY
AND
ARAPAHOE COUNTY
REGARDING E-470 RAMP RELOCATION AT QUINCY AVENUE**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this 10th day of May, 2019 (the “Effective Date”), by and between the E-470 PUBLIC HIGHWAY AUTHORITY, a body corporate and political subdivision of the State of Colorado (the “Authority”); the SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY, a quasi-municipal corporation and political subdivision of the State of Colorado (“SARIA”); and ARAPAHOE COUNTY, a body corporate and political subdivision of the State of Colorado (the “County”) (the Authority, SARIA, and the County may be collectively referred to herein as the “Parties” or individually as a “Party”).

RECITALS

WHEREAS, the Parties, as Colorado governmental entities, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18, and Sections 29-1-201, *et seq.*, C.R.S., to cooperate or contract via intergovernmental agreement with one another to provide functions, services, or facilities authorized to each cooperating government; and

WHEREAS, the Authority has entered into that certain E-470 Public Highway Authority – Quincy Avenue E-470 Northbound Ramp Relocation Conceptual Design Commitment between the Authority and the County, dated July 21, 2017 (the “Commitment”), and the County has retained a consultant to complete conceptual design work at thirty percent (30%) of design completion necessary to support the construction work necessary for the relocation of the E-470 Public Highway (“E-470”) northbound on- and off-ramps at Quincy Avenue, including the installation of a new signalized intersection, to assist with the mitigation of traffic congestion (the “Ramp Relocation Project,” or the “Project”); and

WHEREAS, the County will be improving the current intersection of Quincy Avenue and Gun Club Road with a partial continuous flow intersection; and

WHEREAS, the Parties recognize that the proximity of the northbound on and off-ramps of E-470 at Quincy Avenue and the intersection of Quincy Avenue and Gun Club create operational and safety concerns; and

WHEREAS, SARIA was established, in part, to support the planning, designing, construction, installing, acquiring, relocation, redeveloping and financing of regional

improvement projects to benefit the City of Aurora and SARIA's member districts, their constituents, and the public; and

WHEREAS, on June 15, 2018, SARIA adopted the South Aurora Regional Improvement Authority Master Plan Number Two (the "Master Plan"), pursuant to which Master Plan SARIA is authorized to contribute funding to support various regional improvements projects; and

WHEREAS, consistent with the Master Plan, SARIA has identified the Ramp Relocation Project as a top priority regional improvement and has authorized funding to directly support the Project as further set forth in the Master Plan; and

WHEREAS, consistent with the Master Plan and as further set forth herein, SARIA and the County desire to enter into this Agreement with the Authority in order to provide to the Authority financial contributions toward the completion of the Ramp Relocation Project; and

WHEREAS, the Parties and their respective residents, constituents, taxpayers, and customers will jointly benefit from the mitigation of traffic congestion in the E-470, Quincy Road, and Gun Club Road corridors, and the Parties therefore agree to jointly share in the costs of the Ramp Relocation Project as provided herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby covenant and agree as follows:

AGREEMENT

1. **RECITALS.** The foregoing recitals are hereby incorporated as though fully set forth herein.

2. **AUTHORITY RESPONSIBILITY FOR RAMP RELOCATION, DESIGN AND CONSTRUCTION.** The Parties understand and agree that the Authority, with coordination and cooperation from the County, the City of Aurora (the "City"), SARIA, and other applicable entities, as necessary, shall be primarily responsible for facilitating, overseeing, and completing the Ramp Relocation Project, including but not limited to completing the necessary ramp removal, and Project design and construction, as further set forth herein.

A. **Ramp Relocation Property Acquisition.** The Authority, with coordination and cooperation from the County, shall acquire such real property as is deemed necessary to complete the Ramp Relocation Project (the "Ramp Property").

B. **Completion of Final Design for Ramp Relocation Project.** The Authority shall facilitate the completion of the final design necessary to allow construction of the Ramp Relocation Project (the "Final Design") as follows:

(i) The Authority shall procure the Final Design for the construction of the Ramp Relocation Project and provide such Final Design to SARIA and the County for review prior to the initiation of construction for the Ramp Relocation Project.

(ii) SARIA and the County shall be afforded the opportunity to review the design during development of the Final Design at the sixty percent (60%) and (90%) stages of completion, as well as upon full completion of the Final Design. SARIA and the County shall have fifteen (15) days from the date the review is provided to review the development of the Final Design at the referenced stages and to offer comments. The Authority will consider all comments and will retain final approval authority over the Final Design; provided, however, the Authority and County shall both agree on the final location of the ramps at the point of their intersections with Gun Club Road.

(iii) In the event redesign of the Authority-approved Final Design becomes necessary after construction of the Ramp Relocation Project has begun, the Authority shall notify SARIA and the County of the redesign necessity and SARIA and the County shall be afforded a fifteen- (15-) day review period in the manner and substance described in Section 2.B.(ii). If any one of the Parties requests material changes at any time that will cause the incurrence of additional costs that the other Parties do not reasonably agree are necessary to redesign the Final Design, the requesting Party shall be responsible for paying the cost of such additional redesign changes. In the event the City requests material changes at any time that will cause the incurrence of additional costs that the Parties do not reasonably agree are necessary to redesign the Final Design, SARIA agrees it shall in good faith endeavor to appropriate additional funds in order to pay the cost of such additional redesign changes.

(iv) SARIA's and the County's contribution toward the costs of the Project, including but not limited to the Final Design, shall be funded as provided in Section 4 of this Agreement.

C. Construction of Ramp Relocation Project. The Authority shall oversee the completion of the Ramp Relocation Project, including but not limited to obtaining all necessary permits and approvals for construction; removing the existing E-470 ramps and any and all appurtenances and equipment located at Quincy Avenue; overseeing the construction of the new ramps; overseeing the construction of a trail connecting sidewalks at Quincy Avenue and Gun Club Road (the "Trail Connection"); and overseeing the installation of traffic signalization and related equipment as well as tolling infrastructure and equipment (collectively, the "Ramp Relocation Improvements"), all generally in accordance with the ramp relocation overview attached hereto as **Exhibit A** and incorporated herein by this reference (the "Ramp Relocation Overview"), and in compliance with any and all applicable local, state and federal laws, rules and regulations. The Authority anticipates completing the Ramp Relocation Project as part of the Authority's road widening project beginning in 2019 to achieve economies of scale and other efficiencies and cost savings.

D. Anticipated Completion of Ramp Relocation Project. The Authority will use reasonable efforts to complete the Ramp Relocation Project by December 31, 2020. No failure by the Authority to complete the Ramp Relocation Project by December 31, 2020 shall constitute a breach of this Agreement so long as the Authority pursues completion with reasonable efforts and due diligence.

E. Communication. The Authority shall keep accurate records of the progress of the Project and shall provide status reports to SARIA and the County, or their designees, on a regular basis (a minimum of every month after execution of this Agreement), including progress updates, notice of any problems related to the Project, and a record of payments made to any contractor(s). Said status reports shall include updates to the Project Costs expended and the remaining costs projected to be expended through the Project completion, and shall note any variances from the estimated Project Costs, as well as any adjustments to the time schedule for Project completion.

3. INSURANCE. The Authority shall require that the contractor(s) performing work for the Ramp Relocation Project obtain and maintain insurance in customary industry amounts satisfactory to the Authority. The Authority shall require that such contractor's insurance coverage name the County and SARIA as additional insureds with respect to the Ramp Relocation Project work, and such contractors shall first obtain a right-of-way permit from the County prior to commencing work on Gun Club Road, as applicable.

4. COUNTY, SARIA AND AUTHORITY CONTRIBUTIONS TO COSTS OF RAMP RELOCATION PROJECT.

A. General. As provided and allocated in this Section 4, SARIA, the County, and the Authority agree to pay the total costs of the Ramp Relocation Project, including, but not limited to, all costs associated with the Authority's acquisition of real property; the Authority's completion of the Final Design; project and construction management; removal of the existing ramps; construction of the new ramps, Trail Connection, traffic signalization devices and equipment and tolling infrastructure and other associated equipment, including inspections and testing; necessary environmental compliance, remediation, and related costs; permitting and administrative review fees; and any and all other associated costs and expenses of the Ramp Relocation Project (the "Project Costs"). The Parties agree the internal administrative costs of each Party related to the Ramp Relocation Project, including but not limited to the preparation of this Agreement, are not considered permitting or administrative review fees and shall not be considered Project Costs, and instead shall be borne by each individual Party. The total Project Costs are currently estimated to be approximately Nine Million Dollars (\$9,000,000) as summarized in **Exhibit B** (the "Project Cost Estimate").

B. County Funding. The County hereby agrees to contribute to the Authority the amount of Three Million Dollars (\$3,000,000) for the express limited purpose of funding the Project Costs (the "County Contribution") as follows:

(i) The County shall pay to the Authority, within 30 days of the Effective Date of this Agreement, the sum of Three Hundred Thousand Dollars (\$300,000) (the “Initial County Contribution”) from any legally available funds of the County.

(ii) The County shall pay to the Authority, on or before December 31, 2021, the sum of Two Million Seven Hundred Thousand Dollars (\$2,700,000) (the “Remaining County Contribution”) from any legally available funds of the County in accordance with the following schedule:

2020	\$1,400,000
2021	\$1,300,000

(iii) The Initial County Contribution and Remaining County Contribution shall be made in a manner mutually agreeable to the County and the Authority, which may include wire transfers.

C. SARIA Funding. SARIA hereby agrees to contribute to the Authority the amount of Three Million Dollars (\$3,000,000) for the express limited purpose of funding the Project Costs (the “SARIA Contribution”) as follows:

(i) In order to fund regional public improvement projects, including the Project as set forth herein, SARIA issued bonds in December 2018 (the “Initial Bonds”). SARIA shall pay to the Authority, within 30 days of the Effective Date of this Agreement, the sum of Two Million Dollars (\$2,000,000) (the “Initial SARIA Contribution”) from the proceeds of the Initial Bonds and other available funds. The Initial SARIA Contribution shall be made in a manner mutually agreeable to SARIA and the Authority, which may include wire transfers.

(ii) SARIA shall pay to the Authority the remaining unpaid balance of the SARIA Contribution (the “Remaining SARIA Contribution”) from either: (a) monetary savings realized by SARIA on other capital projects described in the Master Plan being funded by SARIA from the Initial Bonds, if one or more of such projects is completed for an amount which is less than SARIA’s current estimates for the project(s) as listed in Exhibit C (the “Project Savings”); (b) the proceeds of SARIA’s next bond issue following the Initial Bonds (the “Subsequent Bonds”), which Subsequent Bonds are anticipated to be issued by SARIA within the next three to five years as the bond market and other factors allow; (c) from a combination of Project Savings and the Subsequent Bonds in the event Project Savings paid to the Authority as projects are funded by SARIA are not sufficient to fully fund the Remaining SARIA Contribution; or (d) from any other legally available revenues of SARIA paid to the Authority in the discretion of the Board of Directors of SARIA. SARIA shall pay to the Authority the Remaining SARIA Contribution no later than five (5) years from the Effective Date hereof.

(iii) SARIA's current estimates for the projects approved by the Master Plan and anticipated to be funded by the Initial Bonds are attached hereto and incorporated herein by this reference as **Exhibit C**. Upon SARIA's funding of each project listed in Exhibit C, or realization by SARIA of Project Savings associated with the progress of a project, SARIA shall report in writing to the Authority regarding the Project Savings, if any, and shall remit the Project Savings to the Authority for each project within ninety (90) days of SARIA's receipt of the same, unless otherwise agreed by SARIA and the Authority.

D. Authority Funding. The Authority agrees to contribute the amount of Three Million Dollars (\$3,000,000.00) for the express limited purpose of funding the Project Costs.

E. Project Cost Overruns and Underruns.

(i) If the Authority becomes aware that the actual Project Costs may exceed the Project Cost Estimate, the Authority will provide SARIA and the County with written notice of the same as soon as is reasonably possible.

(ii) In the event the actual Project Costs do in fact exceed the Project Cost Estimate, each of the Parties shall in good faith endeavor to appropriate additional funds in order to each fund one-third (1/3) of the total amount of the Project Costs above the Project Cost Estimate (the "Additional Costs"); provided, however, the Authority, SARIA, and the County expressly understand and agree that nothing in this Agreement in any way obligates SARIA or the County to budget, appropriate, transfer, pay or otherwise contribute to the Authority or the Project an amount in excess of the SARIA Contribution or the County Contribution, respectively.

(iii) In the event the actual Project Costs are in fact less than the Project Cost Estimate upon final completion of the Project, the Authority, SARIA, and the County will each be entitled to one-third (1/3) of the difference between the total actual Project Costs and the Project Cost Estimate (the "Ramp Project Savings"), and, within 30 days of final completion of the Project, the Authority shall transfer to SARIA and the County their respective shares of the Ramp Project Savings, as applicable; provided, however, if SARIA or the County has not yet contributed the full SARIA Contribution or County Contribution, respectively, such Party's share of the Ramp Project Savings shall be first applied to pay in full the Remaining SARIA Contribution or Remaining County Contribution amounts due to the Authority, as applicable, and only if there are additional Ramp Project Savings amounts available after payment in full to the Authority of the SARIA Contribution and the County Contribution shall SARIA or the County, respectively, be entitled to receive its share of the Ramp Project Savings, or a portion thereof, if any.

5. COMPLETION OF IMPROVEMENTS; OWNERSHIP AND MAINTENANCE. Following the Authority's acquisition of the Ramp Property, the Authority

shall own the Ramp Property in fee or shall have such other property interest therein as the Authority has secured and shall be responsible for maintaining the same. The Authority will own, operate and maintain the Ramp Relocation Improvements upon their completion, except for any specific portion of the Ramp Relocation Improvements conveyed to either the County or the City, as applicable. Nothing herein shall be construed as granting SARIA, the County, or any other entity any rights, property or otherwise, in or to the Authority's right-of-way or multi-use easement except as otherwise granted herein. In the event the Authority reasonably requires the use of additional real property owned by the County to construct, operate, or maintain Authority-owned Ramp Relocation Improvements, including the ramps, guardrails, drainage, tolling, or other equipment and associated facilities, subject to the approval of the Arapahoe County Board of County Commissioners, the County agrees to the grant to the Authority perpetual easements as necessary therefor. The Authority and City intend to enter into a separate agreement regarding the City's ownership and maintenance of the traffic signalization devices and equipment for the Project. The Authority and County also intend to enter into a separate agreement regarding the County's ownership and maintenance of the Trail Connection and Ramp Property within Gun Club Road.

6. CHARACTER OF SARIA AND COUNTY ROLES. Except for the SARIA Contribution and County Contribution and as otherwise expressly set forth herein, the Parties expressly understand and agree that neither SARIA nor the County shall have any duty, obligation, responsibility or liability to the Authority related to the planning, design, construction, completion, ownership, operation or maintenance of the Ramp Relocation Project or the Ramp Relocation Improvements. Neither SARIA nor the County shall be liable to the Authority for any claims, demands, losses, damages, expenses, injuries, or liabilities arising from the death or injury of any person or persons, including any claims of the Authority 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 Authority, its officers, employees, or agents, or any other funding entities or the Project contractor(s).

7. BREACH AND ENFORCEMENT. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this Agreement. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado.

8. TERM OF AGREEMENT AND TERMINATION. This Agreement shall be effective as of the Effective Date identified above and shall terminate upon the earlier of: (1) final payment of the County Contribution and the SARIA Contribution to the Authority, final completion and close out of the Project, and final accounting of the Project Costs being provided by the Authority to SARIA and to the County; or (2) termination in the event of default pursuant to the below provisions.

Except as otherwise provided in this paragraph, all Parties shall have the right to terminate this Agreement after one hundred eighty (180) days written notice to the other Parties

in the event of a default which is not cured; provided, termination 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 one hundred eighty (180) days from receipt of the notice of the default. If such actions are not successful within said period of time, the non-defaulting parties shall have the right to terminate this Agreement upon written notice to the other non-defaulting party and the defaulting party. In the event of termination for default, the Authority shall settle all accounts related to the Project and remit to SARIA and the County any portion of the SARIA Contribution or the County Contribution, respectively, that has not been applied to Project Costs as well as SARIA's and the County's respective pro rata share of any monies recovered from or refunded by any Project contractor, as applicable.

9. MISCELLANEOUS.

A. Assignment. None of the Parties hereto may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other Parties. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.

B. Time is of the Essence. The Parties acknowledge that time is of the essence in the performance of this Agreement.

C. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the Parties shall not be deemed or constitute partners, joint venture participants, or agents of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the others.

D. No Third-Party Beneficiaries. It is expressly understood and agreed that 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. It is the express intention of the Parties that any person or entity other than the SARIA, the County, and the Authority shall be deemed to be only an incidental beneficiary under this Agreement.

E. Governmental Immunity. Nothing in this Agreement or in any actions taken by the Parties or their respective elected officials, directors, officers, agents and employees pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

F. No Personal Liability. No elected official, director, officer, agent or employee of the Parties 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.

G. Annual Appropriations. The Parties are political subdivisions of the State of Colorado and, as such, any and all financial obligations described hereunder are subject to annual budget and appropriations requirements of applicable law.

H. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to any Party hereto by another Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or, in lieu of such personal services, when received in the United States mail, first-class postage prepaid addressed to:

If to SARIA:

South Aurora Regional Improvement Authority
Attn: President
c/o Special District Management Services, Inc.
141 Union Boulevard
Lakewood, CO 80228

With a copy to:

South Aurora Regional Improvement Authority
c/o Spencer Fane LLP
Attn: Tom George
1700 Lincoln Street, Suite 2000
Denver, CO 80203

If to the Authority:

E-470 Public Highway Authority
Attention: Executive Director
Administrative Headquarters Facility
22470 E. 6th Parkway
Aurora, CO 80018

With a copy to:

E-470 Public Highway Authority
c/o Icenogle Seaver Pogue
Attn: Tamara Seaver
4725 South Monaco Street, Suite 360
Denver, CO 80237

If to the County:

County of Arapahoe
Attn: Public Works and Development Director
6924 S. Lima Street
Centennial, CO 80112

With a copy to:

County of Arapahoe
Attn: County Attorney's Office
5334 S Prince Street
Littleton, CO 80120

Any Party may change its address for the purpose of this Section by giving written notice of such change to the other Parties in the manner provided in this Section.

I. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

J. Controlling Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the Parties, the exclusive venue for dispute resolution shall be the District Court for and in Arapahoe County, Colorado.

K. 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.

L. Binding Contract. This Agreement shall inure to and be binding on the successors and permitted assigns of the Parties.

M. Entire Contract. This Agreement constitutes the entire agreement between the Parties with regard to the Ramp Relocation Project and sets forth the rights, duties, and obligations of each Party to the other Parties as of this date; provided, nothing herein should be construed as amending or modifying the Commitment. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement with regard to the Ramp Relocation Project, but specifically excepting the Commitment, are of no force and effect.

N. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

O. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

P. Counterpart Execution. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be

deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

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EXHIBIT A

RAMP RELOCATION OVERVIEW

QUINCY AVENUE RAMP RELOCATION

PROJECT OVERVIEW

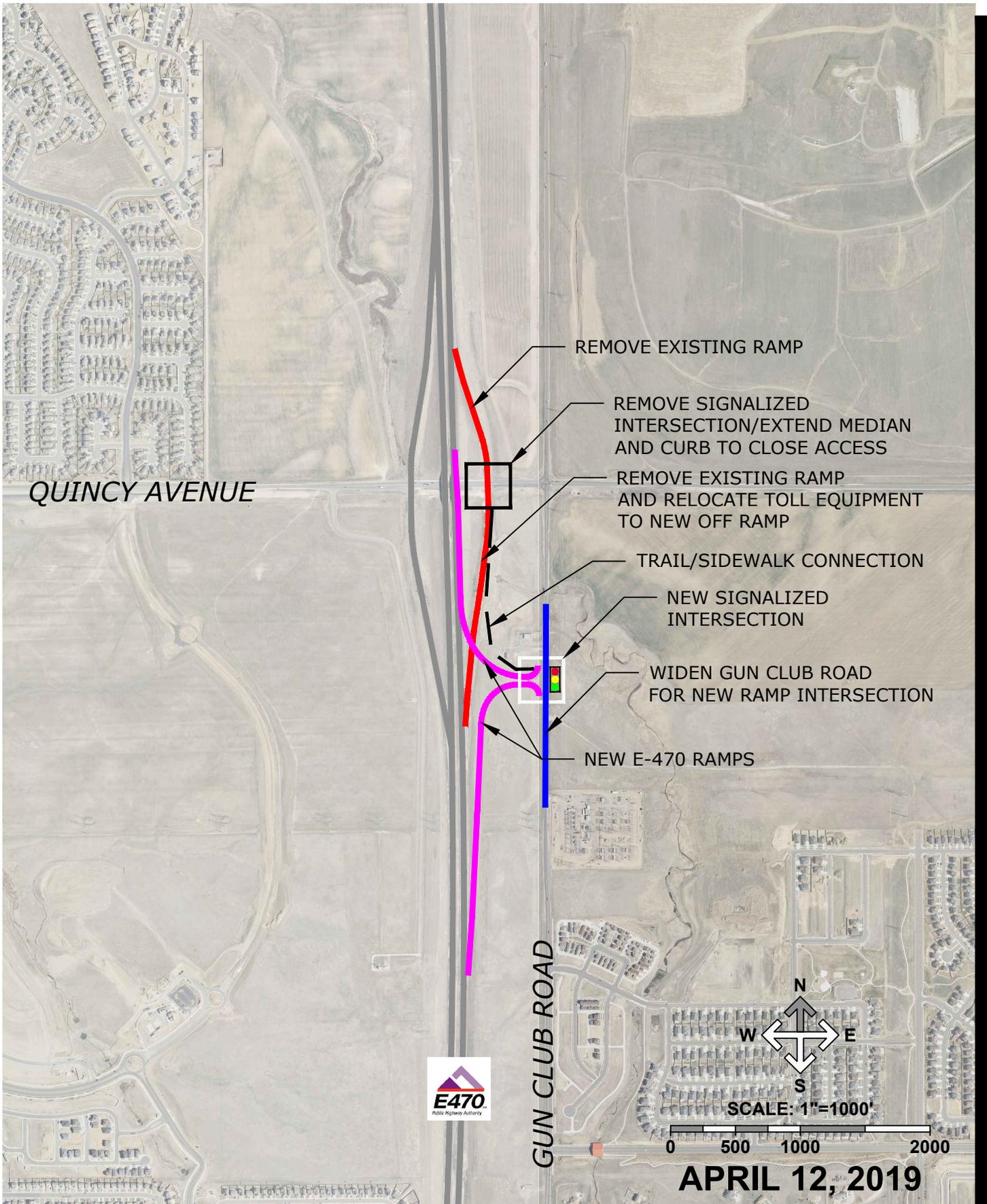


EXHIBIT B

RAMP RELOCATION PROJECT ESTIMATE (Dec. 2018)

1. Final Design Consultant	\$500,000.00
2. Property Acquisition	\$1,700,000.00
3. Construction	\$5,300,000.00
4. Construction Management	\$600,000.00
5. Design Support During Construction	\$100,000.00
6. Contingency	\$800,000.00

TOTAL = \$9,000,000.00

