

DRAFT - July 11, 2018
MEMORANDUM OF UNDERSTANDING
REGARDING THE DOUGLAS COUNTY
SUBREGIONAL TRANSPORTATION FORUM

BY AND AMONG THE FOLLOWING AGENCIES:

CITY OF AURORA
CITY OF CASTLE PINES
CITY OF LITTLETON
CITY OF LONE TREE
TOWN OF CASTLE ROCK
TOWN OF LARKSPUR
TOWN OF PARKER
AND
DOUGLAS COUNTY

THIS DOUGLAS COUNTY SUBREGIONAL TRANSPORTATION FORUM MEMORANDUM OF UNDERSTANDING (the “MOU”) is entered into effective as of the ____ day of _____, **2018** (the “Effective Date”), by and among the Cities of Aurora, Castle Pines, Littleton, and Lone Tree, the Towns of Castle Rock, Larkspur, and Parker, and Douglas County, all such parties being referred to collectively herein as the “Agencies” or individually, as an “Agency”

WITNESSETH

WHEREAS, the Agencies are all communities having governmental jurisdiction within their respective territorial boundaries within Douglas County, Colorado; and

WHEREAS, as local government Agencies, are authorized by the provisions of Colorado Constitution Article XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, *et seq.*, to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Denver Regional Council of Governments (“DRCOG”), through its Transportation Improvement Program (“TIP”), allocates certain federal funding for transportation-related projects eligible for federal funding, which include multi-modal facilities such as new roadways, widening of roadways, bridges, reconstruction projects, operational improvement projects, capacity projects, on and off-street bicycle and pedestrian facilities, interchanges, intersections, transit and bus service, studies, etc. (“Transportation Improvements”) as identified by the Metropolitan Planning Organization (“MPO”) for the Denver Metropolitan Area; and

WHEREAS, DRCOG has developed a Dual Model TIP process for allocation of federal funds allocated to DRCOG as the MPO, for distribution to its members. The Dual Model TIP consists of a Regional and Sub-Regional apportionment of federal funds as decided and approved by the DRCOG Board; and

WHEREAS, the solicitation, evaluation, selection, and approval of Regional projects and distribution of the Regional portion of the MPO federal funds will be the sole responsibility of DRCOG and the DRCOG Board; and

WHEREAS, the DRCOG Board has established that Regional Project applications shall only be accepted from the Colorado Department of Transportation (“CDOT”), Regional Transportation District (“RTD”), and the Sub-Regions within DRCOG’s boundary; and

WHEREAS, the DRCOG Board through approval of the DRCOG TIP Policy and Criteria has established Sub-Regions within their boundary, which consists of each county as a Sub-Region for that county; and

WHEREAS, the DRCOG Board of Directors has authorized local governments within Douglas County Sub-Region (“the “Sub-Region”) to propose jointly to the DRCOG Board of Directors allocation of federal transportation funding for Transportation Improvements within Douglas County’s incorporated and unincorporated areas (“Sub-Regional Funding”); and

WHEREAS, the coordinated efforts of all the Agencies are encouraged to participate in identifying Douglas County’s list of recommended priority projects that will be submitted to the DRCOG Board for their approval as part of the Dual Model process established for the DRCOG TIP; that help improve transportation infrastructure needs in Douglas County and / or benefits Douglas County constituents; and

WHEREAS, the Agencies, as signatories hereto, desire to establish a transportation forum of local Agency jurisdictions within the Douglas County Sub-Region (“Forum”) in order to coordinate transportation planning and funding requests as part of the DRCOG TIP process among such participating Agencies as well as those other agencies approved by DRCOG to submit project applications; and

WHEREAS, pursuant to federal requirements, Agencies are eligible to submit project applications to the Forum for consideration of TIP funding if they meet the eligibility requirements for funding irrespective of whether the Agency has signed this MOU; and

WHEREAS, the Forum is responsible for selecting and submitting Regional Transportation Improvement project applications (“Regional Projects”) to DRCOG in conformity with the requirements and processes outlined in this MOU for Douglas County Regional Funding with the undersigned Agencies agree not to submit individual projects to DRCOG directly; and

WHEREAS, the Forum is responsible for soliciting, selecting, recommending and submitting a list of Sub-Regional Transportation Improvement Projects (“Sub-Regional Projects”) to DRCOG in conformity with the requirements and processes outlined in this MOU for Douglas County Sub-Regional Funding with the undersigned Agencies agree not to submit individual projects to DRCOG directly; and

WHEREAS, the Agencies desire to set forth their mutual understanding of the manner in which the transportation planning efforts in Douglas County will be conducted and coordinated for the purpose of submitting Regional and Sub-Regional Project Funding requests established

for DRCOG's Dual Model TIP process, and this Forum may also be used to collaborate on transportation improvements during the off-TIP cycle years.

NOW, THEREFORE, THE AGENCIES HEREBY AGREE TO COOPERATE AS FOLLOWS:

1. Term. The term of this Memorandum of Understanding, ("MOU") shall commence on the Effective Date and be for an initial term of four (4) years ("Initial Term") from the Effective Date. Thereafter, this Agreement shall be automatically renewed for successive four-year (4) terms. However, after expiration of the Initial Term, any Agency may withdraw from the renewed MOU by providing written notice of its intent to do so at least (30) days prior to the date of their withdrawal from this MOU. The notice to withdraw shall be by formal action of the governing body of the Agency requesting withdrawal. The MOU shall remain in effect as to all Agencies which have not withdrawn unless this MOU is terminated by all of the Agencies.
2. Agency Option to Sign this MOU. If an Agency has not originally signed this MOU, or withdraws from the MOU pursuant to the provision in Section 1 above, such Agency may become a party to this MOU by executing the MOU. This opportunity to become a party to the MOU will need to occur prior to DRCOG's formal TIP Cycle Call for Regional Project Applications, which is anticipated to occur on or before August 1, 2018.
3. Subregional Steering Committee and Technical Working Group Representatives. There is created a Douglas County Steering Committee ("SC") for this Subregional Transportation Forum. Each Agency shall appoint a minimum of two (2) representatives for the Steering Committee – one to serve as the Primary member and one as an Alternate member. It shall be the duty and purpose of the Steering Committee to approve the Subregional Projects list to be submitted to DRCOG for Sub-Regional Funding, as well as the Regional Project applications to be submitted from the Douglas County Sub-Region. These project lists will be created after input and recommendations from the Subregional Technical Working Group ("TWG") and project selection shall be in conformity with the criteria established by DRCOG and in this MOU.

Each Agency shall also appoint up to two (2) alternates to the Steering Committee ("Alternates") to be in attendance if the Primary representative is unable to attend Steering Committee meetings or to perform other duties. Alternates shall have the authority to act in the full capacity for the Agency regarding the duties associated with this Subregional Transportation Forum. Although, Primary representatives are typically elected officials, the alternatives do not have to be an elected official. Each agency shall submit a written notice (including email messages) identifying who their Steering Committee representatives will be for the upcoming TIP cycle project selection process for funding from 2020 through 2023.

Each Agency is required to submit to Douglas County Transportation Capital Improvements Projects Manager (CIP Manager), who will serve as the Chair of the TWG, a list identifying their Steering Committee representatives and their Technical Working Group representatives on or before August 15, 2018, and notify the CIP Manager of any changes or confirm representatives on an annual basis. In the spring of 2018, several Agencies already identified

their representatives and a current list of Steering Committee and Technical Working Group representatives is shown in the Appendix.

4. Establish Steering Committee Chair and Vice-Chair. The Steering Committee representatives are responsible for selecting a Chair and Vice-Chair. Each Agency is allowed one vote in selecting a Chair person and one vote in selecting a Vice-Chair person. In the spring of 2018, the Agencies selected a Chair and Vice-Chair for upcoming TIP cycle project selection process for funding from 2020 through 2023. The current Chair and Vice-Chair persons will serve in this capacity through the DRCOG's upcoming TIP cycle project selection process ends, which is anticipated to be substantially completed by the summer of 2019. The Chair is responsible for working with the Technical Working Group Chair to establish the agenda for the Steering Committee meetings, chairing the meetings, establishing the meeting locations, establishing rules of procedure for Steering Committee's adoption, distributing meeting materials and minutes.
5. Decision Making of the Steering Committee. Each Agency will have one vote on all decisions of the Steering Committee. All decisions of the Steering Committee shall be made by motion duly seconded and approved by a majority of the required quorum as set forth below, with each Agency member voting by either the Primary or the Alternate for such Agency. Decisions requiring such action include, without limitation:
 - a. The selection of project applications to be submitted to DRCOG for consideration as a Regional Project.
 - b. The development of the Sub-Regional Project list to be submitted to the DRCOG Board for approval and inclusion in the TIP.
 - c. The Steering Committee will seek to develop a waiting list of priority projects should additional DRCOG funding become available.
6. Quorum for the Steering Committee and the Technical Working Group Decisions. Quorums of the Steering Committee and Technical Working Group on the actions requiring votes are as follows:
 - a. For Steering Committee decisions /related to Douglas County Subregional policy, procedures, approval of supplemental TIP criteria, and project recommendations to the DRCOG Board, (including Regional Project applications and Subregional Project Funding list), and any other decisions requiring a vote, a minimum of four (4) of the Agencies must be in attendance to constitute a quorum. And a minimum of fifty percent (50%) of voter approval is needed in order to pass.
 - b. For Technical Working Groups recommendations related to Douglas County Subregional policy, procedures, approval of supplemental TIP criteria, and project recommendations to the Steering Committee (including Regional Project applications and Subregional Project Funding list), and any other decisions requiring a vote, a minimum of four (4) of the Agencies must be in attendance to constitute a quorum. And a minimum of fifty percent (50%) of voter approval is needed in order to pass.

If there is not the requisite quorum at the time for which a vote shall have been called, the meeting may be adjourned from time to time by a majority of the Agencies present without notice, other than by announcement at the meeting, or continued until there is the requisite quorum for the relevant vote.

7. Meeting Times for Steering Committee. During each year in which the TIP process and project selection will occur, the Steering Committee will, at a minimum, meet monthly or as often as needed in order to develop and timely submit the recommended project application and funding request list. In non-TIP Cycle years, the Steering Committee will typically meet a minimum of twice a year in March and October or as established by the Chair of the Steering Committee.
8. Notice. Notice of the Steering Committee meetings and Technical Working Group meetings will occur by posting of the Agenda at least forty-eight (48) hours in advance of the meeting. Douglas County is required to post these SC meeting in accordance with its standard practices. Posting locations shall be in accordance with the Colorado Open Meetings Law. Regardless of where the Steering Committee and Technical Working Group meetings are to be held, the County is responsible for Noticing the Meeting at the County, and notifying DRCOG to notice the meeting, as well as encouraging the host agency to notice the meeting.
9. Technical Working Group. There is also created the Technical Working Group (“TWG”) for this Subregional Transportation Forum. Each Agency will appoint a staff member from their Agency as the Primary representative to serve on the TWG. Each Agency shall also appoint an Alternate representative to serve on the TWG and to be in attendance Primary is unable to attend TWG meetings or other functions. The TWG Alternate shall have the authority to act in the full capacity of the TWG Primary, but the Agency will only have one vote on the TWG although both Agency representatives are encouraged to attend TWG meetings. TWG representatives are strongly encouraged to attend all Steering Committee meetings.

The TWG is responsible for the review, evaluation, and scoring of project applications submitted for both Regional and Sub-Regional Projects. The TWG will make recommendations to the Steering Committee on the Regional Project application to be submitted to DRCOG and also for Sub-Regional funding selections. The TWG will utilize the DRCOG Project Evaluation and Ranking Criteria and/or Arapahoe County Transportation Forum Evaluation/Ranking Criteria (approved by DRCOG staff) to initially rank the projects submitted by eligible agencies for Sub-Regional Funding and funding through Regional process. This ranking will be presented to the Steering Committee for their consideration and approval.

The Douglas County Representative will function as the Chair for the TWG meetings, unless the Steering Committee votes to appoint a different Chair for the TWG committee. The TWG will select a Vice-Chair to conduct the meetings and fulfill the other duties of the Chair in the Chair’s absence. The Chair is responsible for scheduling TWG meeting dates / times, setting the meeting agendas, running the meetings, distributing meeting materials, meeting minutes, preparing documentation to be presented to the Steering Committee, assisting the Steering Committee Chair or Vice-Chair in preparing their agendas, and noticing both the TWG and SC meetings.

10. Other Agency Participation. Representatives from DRCOG, CDOT, RTD, and Denver South Transportation Management Association (“Denver South TMA”) are invited to attend both the Steering Committee meetings and Technical Working Group meetings, but these entities will not have any voting authority on either committee.
11. Sub-Region Procedures and Criteria for Possible TIP Project Selection. The Agencies agree to submit all DRCOG funding requests for Regional and Sub-regional Projects through the Forum established under this Agreement. DRCOG has established its independent overall criteria regarding project eligibility and evaluation of submitted projects, which shall be adhered to. The Steering Committee may choose to establish additional policies and criteria consistent with applicable Federal law and regulation. The procedure for the requesting applications for Regional and Sub-Region projects applications will be established by the Steering Committee. Supplemental criteria approved by the Steering Committee is included in the Appendix and may be amended from time to time and a revision dated will be used to reflect the most up to date criteria.

With regard to Regional Projects submitted to DRCOG by this Forum, the Steering Committee is responsible for the following:

- a. Receive project applications from eligible applicants.
- b. Evaluate applications using applicable criteria and utilize the Technical Working Group to evaluate project applications and make recommendations to the Steering Committee.
- c. Prioritize the projects.
- d. Determine local funding matching funding and by which agency(ies).
- e. Collaborate and develop partnerships with other applicable agencies and/or Sub-regions if deemed appropriate.
- f. Meet to discuss the applications and make recommendations.
- g. Make submittal of projects to DRCOG for consideration of Regional Funding.

With regard to Sub-regional Projects submitted to DRCOG by the Forum, the Steering Committee is responsible for the following:

- a. Receive project applications from eligible applicants.
- b. Evaluate applications using applicable criteria and utilize the Technical Working Group to evaluate project applications and make recommendations to the Steering Committee.
- c. Prioritize the projects.
- d. Determine local funding matching funding and by which agency(ies).
- e. Collaborate and develop partnerships with other applicable agencies and/or Sub-regions if deemed appropriate.
- f. Meet to discuss the applications and make recommendations.
- g. Make submittal of a recommended portfolio of Sub-regional projects to the DRCOG Board for approval and inclusion into the TIP using Arapahoe County Sub-regional Federal Funding.

Notwithstanding anything herein to the contrary, Agencies may apply to DRCOG directly for TIP Pool funds within the TSSIP/ITS and TDM Pools for standalone “Element” projects,

including but not limited to, traffic signals, intelligent transportation systems and transportation demand management, without submitting such requests to the Forum.

12. Project Requests for Regional Funding. Any municipality and Arapahoe County may submit projects for consideration by the ArapCo Exec Committee for a Regional Funding application to DRCOG. These projects shall be of regional significance that meet the Regional eligibility, policy, and criteria established and adopted by the DRCOG Board. Each Agency submitting an application shall pre-screen every proposed project submitted to the ArapCo Exec Committee to reasonably confirm that each proposed project conforms to the DRCOG grant requirements and that any grant matching funds are reasonably anticipated to be available. As necessary, coordination shall occur with CDOT, RTD, and/or other Sub-Regions on various projects. This Agreement is not intended to preclude project proposals from cities and towns or other eligible entities that are located within Arapahoe County but are not among the Agencies. Such cities', towns', and other entities' project application submittals shall be considered by the ArapCo Exec Committee on an equal basis with project requests from the Agencies.
13. Project Requests for Sub-Regional Funding. Any municipality and Arapahoe County may submit projects for consideration by the ArapCo Exec Committee for Sub-Regional Funding. Projects may include road, bridge, transit, bike and pedestrian projects. Each agency shall pre-screen every proposed project submitted to the ArapCo Exec Committee to reasonably confirm that each proposed project conforms to the DRCOG grant requirements and that any grant matching funds are reasonably anticipated to be available. This Agreement is not intended to preclude project proposals from cities and towns and other eligible entities that are located within Arapahoe County but are not among the Agencies. Such cities', towns', and other entities' project application submittals shall be considered by the ArapCo Exec Committee on an equal basis with project requests from the Agencies.
14. Planning Timeline. The submittal, review and prioritization of transportation projects will coincide with the bi-annual DRCOG TIP planning process timeline and the CDOT/Transportation Commission planning timeline.
15. General Provisions.
 - a. Integrated Memorandum of Understanding; Amendment. This MOU contains the entire agreement of the Agencies relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of all the Agencies.
 - b. Binding Effect; No Third Party Beneficiaries. This MOU shall be binding upon, and shall inure to the benefit of, the Agencies and their respective successors and assigns. It is expressly understood and agreed that the enforcement of terms and conditions of this MOU, and all rights of action relating to such enforcement, shall be strictly reserved to the Agencies and nothing in this MOU shall give or allow any claim or right of action whatsoever by any other person or entity not included in this MOU. It is the express intention of this MOU that any entity other than the Agencies, including any entity that receives services or benefits as a result of this MOU, shall be an incidental beneficiary only.

- c. Government Immunity. No portion of this MOU shall be deemed to constitute a waiver of any immunities the Agencies or their officers or employees may possess, nor shall any portion of this MOU be deemed to have created a duty of care which did not previously exist with respect to any person or entity not a party to this MOU.
- d. Severability. In the event a court of competent jurisdiction holds any provision of this MOU invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this MOU.
- e. Counterparts; Electronic Disposition. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument. The Agencies acknowledge and agree that the original of this MOU, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this MOU, may be used for any purpose as if it were the original, including proof of the content of the original writing.

By signing this MOU, each Agency acknowledges and represents to the others that all procedures necessary to validly contract and execute this MOU have been performed, and that the person signing on behalf of each Agency has been duly authorized by such Agency to do so.

Appendix A

Steering Committee Representatives, (including identifying Chair and Vice-Chair)

Appendix B

Technical Working Group Representatives, (including identifying Chair and Vice-Chair),

Appendix C

HOLDING area

**DOUGLAS COUNTY
BOARD OF COUNTY COMMISSIONERS**