

## SETTLEMENT AGREEMENT

This Settlement Agreement (this “Agreement”) is made and entered into by and between Petitioners Sierra Club, Elyria and Swansea Neighborhood Association, Chaffee Park Neighborhood Association, and Colorado Latino Forum (individually, “Petitioner” and collectively, “Petitioners”); and Defendants-Intervenors the Colorado Department of Transportation and Michael P. Lewis (together, “CDOT”). It is agreed upon and intended that this Agreement constitutes a final and complete resolution of Petitioners’ civil action in *Sierra Club et al. v. Chao, et al.* (D. Colo. No. 17-1679) (the “Legal Action”). Petitioners and CDOT are collectively referred to in this Agreement as the “Parties.” This Agreement shall take effect (the “Effective Date”) upon the date when copies of counterparts are delivered to all Parties demonstrating that the Agreement has been executed by the last of each of the signatories identified on the signature page and approved by the Colorado State Controller.

### Recitals

WHEREAS, Petitioners filed the Legal Action in the United States District Court for the District of Colorado (the “Court”) seeking review of the Record of Decision (“ROD”) issued by the U.S. Department of Transportation, Federal Highway Administration (“FHWA”), on January 19, 2017, approving and authorizing federal funding to expand Interstate 70 in Denver, Colorado (the “Project”);

WHEREAS, Petitioners originally named the FHWA, Secretary of Transportation Elaine Chao, and FHWA Division Administrator John Cater (collectively, “Federal Defendants”) as defendants in the Legal Action;

WHEREAS, CDOT moved to intervene in the Legal Action, which motion was granted by the Court on September 11, 2017;

WHEREAS, CDOT and the Federal Defendants (collectively, “Defendants”) have defended this case and maintain that there have been no violations of federal law associated with the Project or its approval;

WHEREAS, CDOT has selected the team of Kiewit Meridiam Partners (“Developer”) to construct the Project, and the Project has commenced;

WHEREAS, the Developer is not a party to the Legal Action, but has contractual relationships with CDOT to build the Project;

WHEREAS, CDOT is committed to undertake mitigation measures relating to the Project identified in the ROD;

WHEREAS, the contracts regarding the Project require environmental mitigation and safeguards, including those identified in the ROD, and provide for auditing of compliance and for penalties if the Developer is out of compliance;

WHEREAS, the Court has denied Petitioners' Motion for a Stay of FHWA's approval of the Project pending resolution of the Legal Action, but has not yet finally ruled on motions to complete and supplement the administrative record or commenced briefing on the merits of the case;

WHEREAS, neither Petitioners nor CDOT have admitted or admit any allegation or contention of any opposing party in the Legal Action;

WHEREAS, in 2014, the City and County of Denver ("Denver") completed a health impact assessment entitled "How Neighborhood Planning Affects Health in Globeville and Elyria Swansea" (the "2014 Assessment"), which stated that "[r]esidents of Globeville and Elyria Swansea . . . experience a higher incidence of chronic health conditions such as cardiovascular disease, diabetes, obesity, and asthma than other Denver neighborhoods;"

WHEREAS, the Colorado Department of Public Health and Environment ("CDPHE") and Denver have indicated that there would be benefits to further study and analysis of contributors to adverse public health outcomes in the Globeville, Elyria and Swansea neighborhoods;

WHEREAS, Petitioners agree to dismiss their claims if CDOT commits to all terms specified herein;

WHEREAS, Petitioners have requested installation of a PM-10 monitoring network located adjacent to the construction zone and a response program to protect health when an action threshold is exceeded;

WHEREAS, CDOT agrees to establish a PM-10 monitoring network and establish a response protocol to be implemented by the Developer;

WHEREAS, Petitioners and CDOT seek to avoid additional time and expense with continuing litigation and to forge a permanent resolution of Petitioners' existing and future claims regarding the legal sufficiency of the ROD approving the Project;

WHEREAS, Petitioners and CDOT believe that this Agreement provides significant benefits for the affected communities by carefully examining the causes of adverse health outcomes in these neighborhoods, establishing an innovative monitoring program to protect neighborhoods from PM-10 exceedances during construction of the Project, and providing funding for tree planting throughout the Elyria, Globeville and Swansea neighborhoods; and

WHEREAS, Petitioners and CDOT believe it would be beneficial for all parties to coordinate public statements regarding this Agreement and intend to coordinate such statements with each other, provided that, because Sierra Club has a national policy that prevents Sierra Club from agreeing to provisions in settlement agreements that relate to press statements or communications by its members, Sierra Club has provided nonbinding assurances regarding a joint press statement in a separate assurance letter provided to CDOT.

## **Agreement**

NOW, THEREFORE, in light of the foregoing and in consideration of the terms and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the Parties agree to the following:

### **1. CDOT's OBLIGATIONS**

#### **A. Community Health Study**

1. CDOT and the Petitioners shall finalize a Memorandum of Understanding ("MOU") substantially in the form attached as Exhibit A with CDPHE and Denver for the procurement of an independent, qualified contractor with demonstrated expertise (the "Expert") to conduct the community health study ("Health Study") described in Section 1(A)(3) below. The Health Study shall not be attributed to CDOT or FHWA, nor shall the outcome of the Health Study be construed to reflect the position or opinion of CDOT or FHWA. As soon as practicable after the Effective Date, the Parties shall finalize the MOU.

2. CDOT shall contribute the amount of \$550,000.00 for the Health Study to cover the cost of the Expert, and up to the amount of \$25,000.00 to cover the cost of the Independent Steering Committee Member identified in 1(A)(4)(a)(iv) of this Agreement. If other sources of funding dedicated to the Health Study become available from sources other than CDOT, their use shall be guided pursuant to the MOU. Costs incurred by CDPHE or Denver relating to their participation in the Health Study shall not be paid from the funds contributed by CDOT.

The Health Study shall have the following scope:

3. Provide a data-driven assessment of the potential causes of the disparate health outcomes in the Globeville, Elyria and Swansea neighborhoods, including but not limited to those disparate health outcomes identified in the 2014 Assessment.

a) Proposed existing and/or new data sources for the Health Study shall be identified by the Expert selected through the procurement discussed in Section 1(A)(4) of this Agreement.

b) Consider a full range of possible significant causes of these disparate health outcomes, including without limitation, pollution (air, soil, water, noise) from stationary and mobile sources (including vehicles using Interstate 70), socioeconomic factors, barriers to mobility, and availability of healthy foods, such as fresh vegetables.

c) An objective of the Health Study shall be to provide best estimates, as scientifically warranted, of the extent to which these possible significant causes contribute to the adverse health outcomes in Globeville, Elyria and Swansea.

d) The Health Study shall not separately analyze the specific effects of the Project, but shall consider the effects of pollutants, noise and vehicle and rail traffic

as part of the overall range of possible significant causes of current and expected future adverse health outcomes.

e) The Health Study shall not identify possible policy measures or make policy recommendations, but shall provide the public and policymakers with information that can help inform future policy discussions.

4. The Health Study shall be procured in accordance with State of Colorado requirements applicable to CDPHE (the “Procurement Requirements”). The Health Study shall be managed as follows:

a) The Parties shall create a steering committee (the “Steering Committee”) which shall consist of four representatives:

i) One person designated by CDPHE;

ii) One person designated by Denver;

iii) One person designated by Petitioners (except Sierra Club); and

iv) A nationally recognized and independent expert in the field of public health to be chosen by unanimous vote of the above three representatives (“Independent Steering Committee Member”). The members of the Steering Committee other than the Independent Steering Committee Member shall consult with CDPHE to develop criteria acceptable to all Steering Committee members for the procurement of the Independent Steering Committee Member, including qualifications, and criteria for evaluation of candidates.

b) Once the Independent Steering Committee Member is selected, the Steering Committee shall develop guidelines consistent with this Agreement and the MOU for the performance of the Health Study, and for the review and approval of budgets, plans, protocols, and work products of the Expert.

c) The Steering Committee also shall consult with CDPHE to develop criteria for the procurement of the Expert, including qualifications, and criteria for evaluation of candidates.

d) The Expert shall be selected in accordance with the Procurement criteria developed pursuant to 4(c), provided that the Expert must be selected by unanimous agreement of the Steering Committee.

5. The Health Study shall be phased, and all notices to proceed must be approved by the Steering Committee.

a) The first phase shall require the Expert to develop a refined scope of work and protocols for the Health Study, including identifying the relevant existing and/or new data to be used and methodologies to be applied for data collection and analysis. The scope of work and protocols shall be approved by the Steering Committee.

b) Tasks to be performed and completion dates for subsequent phases shall be proposed by the Expert for consideration and approval by the Steering Committee.

c) Milestone payments to the Expert for the completed phases shall be approved by the Steering Committee based on performance of designated tasks.

6. All decisions of the Steering Committee shall require at least four affirmative votes.

7. The Expert shall develop and propose a schedule for the completion of all phases, including the delivery of a final report to the Steering Committee within four years of the selection of the Expert. The Steering Committee shall approve, or in consultation with the Expert, amend the schedule prior to the Expert initiating the first phase of the Health Study.

8. The Steering Committee shall develop a process to provide regular updates and opportunities to meaningfully engage with community residents and stakeholders in the Globeville, Elyria and Swansea neighborhoods. The Steering Committee shall conduct meetings in a manner that assures public access and opportunities for comment after disclosing proposed actions but before making major decisions, such as defining the scope of the Health Study, approving protocols, accepting completed reports and approving work products.

9. The Steering Committee shall provide quarterly disclosure of communications between its members and persons or parties other than the signatories to this Agreement, CDPHE or Denver; and access to written materials that are subject to the Colorado Open Records Act.

10. All final reports, data obtained (unless protected from disclosure under the Colorado Open Records Act), sources and final data files prepared by the Expert, methodologies applied to compile and analyze data and the basis for such methodologies shall be made available to CDPHE, Denver and the Parties, and shall be posted on a website available for public access.

## **B. Air Monitoring**

1. The Parties acknowledge that the Project provides for the installation of an air monitor at Swansea Elementary School, which is already in operation.

2. In addition to the existing air monitor at the Swansea Elementary School, CDOT shall require the Developer to provide four PM-10 monitors (the "Monitors") during the construction period of the Project. The Monitors shall provide continuous recording of data and alerts to CDOT regarding PM-10 concentrations.

3. CDOT shall require the Developer to locate the Monitors in a manner consistent with the requirements of 40 C.F.R. Part 58, Appendix E, and in locations to reflect the PM-10 concentrations in the vicinity of the greatest degree of PM-10-generating activity during various phases of the Project, as determined by CDOT, in its reasonable discretion. CDOT

shall notify or shall require Developer to notify Petitioners of changes in the location of the Monitors as the Project proceeds.

4. The initial locations of the Monitors shall be:

- a) 46th Avenue and Vine Street;
- b) 45th Avenue and Josephine Street;
- c) Southeast of I-70/Quebec; and
- d) North of the I-225/I-70 interchange within CDOT ROW

between the ramps.

5. Consistent with Part 58, Appendix E, the Monitors shall be approximately ten to twelve feet above ground level with sufficient clearance to avoid horizontal obstructions like structures and trees.

6. The Monitors shall be Aeroqual AQY1 monitors or monitors that provide at least the same accuracy.

7. CDOT shall require the Developer to implement an automated PM-10 alert system that shall communicate to CDOT and CDPHE via both text messaging and email when a Monitor records a one-hour average PM-10 concentration of  $135 \mu\text{g}/\text{m}^3$ . This alert system shall continuously monitor the real time data from the Monitors. The level of  $135 \mu\text{g}/\text{m}^3$  is specified in order to allow corrective actions to be implemented prior to exceeding  $150 \mu\text{g}/\text{m}^3$ .

8. Upon receipt of the alert, the Developer shall be required to respond immediately to identify the source of the PM-10 event and to implement effective best management practices (“BMPs”) for dust control. CDOT shall require the Developer to continue this mitigation until the next one-hour PM-10 concentration from the alerting Monitor is below  $135 \mu\text{g}/\text{m}^3$ .

9. Data from the Monitors shall not be used to determine whether the State of Colorado or Denver Metropolitan Area is in attainment or non-attainment of the National Ambient Air Quality Standards.

10. CDOT shall require the Developer to provide for each monitor the hourly concentration for the most recent hour on a publicly accessible project website (that is in both English and Spanish) on an hourly basis, except during maintenance, calibration, monitor relocation, upgrades, outages, or other reasonable delays or circumstances where data is not collected. CDOT shall work with the Developer to minimize downtime.

### **C. Landscaping**

1. CDOT shall require the Developer to work with Denver to provide tree plantings and long-term maintenance within appropriate right of way locations along 46th

Avenue between York Street and Steele Street/Vasquez Boulevard. An exhibit showing the general location of such landscaping is attached hereto as Exhibit B.

CDOT shall require the Developer to provide appropriate vine or other plantings on community-facing sides of permanent noise walls, except for those areas already programmed for community art.

2. Within ninety (90) days after the Effective Date, CDOT will provide to a qualified governmental entity or nonprofit organization identified by Petitioners and acceptable to CDOT the amount of \$25,000.00 to fund the acquisition and planting of trees to be planted throughout Elyria, Swansea and Globeville. Other than providing the \$25,000.00 in funding, CDOT shall have no responsibility for determining the location of any planted trees, the mechanics for distributing or planting the trees, or the long-term maintenance of the trees, all of which shall be the responsibility of the Petitioners or the governmental entity or nonprofit to determine and implement.

#### **D. Communication Resources**

1. CDOT shall require the Developer to use a variety of methods to inform both the adjacent neighbors and the traveling public about construction activities. Such methods shall include, but not be limited to, the following:

a) Easy-to-access webpage, in both English and Spanish, that describes all major construction activities and traffic impacts on local streets affected by movement and operation of construction equipment and contractor vehicles, updated on a weekly basis.

b) To achieve effective public awareness of such activities, the Project shall be required to:

i) send email blasts, text alerts, and social media updates weekly or more frequently as-needed to alert the public to changes or additions to planned activities;

ii) provide community notification of major project developments and heavy work at least seven calendar days in advance, in both English and Spanish;

iii) publish articles and notices in local media;

iv) make presentations to service clubs and community groups in English or Spanish;

v) distribute a monthly newsletter, in both English and Spanish, on general construction information provided via email, posting at community centers, and posting on the website. On a quarterly basis, this newsletter shall also be hand delivered to approximately 2,500 residents in the Elyria Swansea neighborhood; and

vi) post fact sheets on the website on specific issues in both English and Spanish, and provide door-to-door outreach by bilingual personnel to inform specific residents of focused activities affecting their block.

2. CDOT shall require the Developer to establish and maintain a telephone hotline for community feedback and complaints and project information. Assistance will be available for persons with limited or no English proficiency.

a) The voicemail for the project information line shall be recorded in English and Spanish and provide an updated message each week identifying the blocks closest to construction activities during that week, relevant completion dates and the location and nature of forthcoming activities on the Project. The hotline shall allow the recording of a message from the caller.

b) If unable to answer the hotline, the Developer shall check and respond to voicemail messages throughout each day that construction operations and lane closures are being carried out. All telephone messages shall be responded to throughout the day and no later than the same day during weekdays or within 24 hours during weekends if heavy construction equipment is occurring. If there is a high volume of calls, as determined by the Project manager, two-day responses may be necessary.

3. CDOT shall require the Developer to respond to e-mails and text messages sent to the Developer and/or CDOT in the same day or within two working days for high volume situations.

CDOT shall require the Developer to provide a construction web-camera that is anticipated to be located on top of the Purina building. The web-camera shall provide regular images that can be accessed from the Project webpage and shall focus on the construction of the lowered highway section.

#### **E. Oversight**

1. CDOT shall require the Developer to report the following items to CDOT on air-quality data and response actions:

a) Notification within one hour if the PM-10 concentration at a monitor, based on the most-recent hourly concentration measured at that monitor, exceeds 135  $\mu\text{g}/\text{m}^3$ .

b) Notification of actions taken to address any circumstances when PM-10 concentrations at a monitor, calculated by averaging the most-recent hourly concentration measured at that monitor, exceed 135  $\mu\text{g}/\text{m}^3$ .

c) Monthly reports on air-quality observations and mitigation.

2. CDOT shall require the Developer to log and report to CDOT on all inquiries to the hotline regarding Central 70.



3. CDOT shall require the Developer to prepare a quarterly communications report during the construction period. Each quarterly report shall be provided in English, and if requested by a member of the public, Spanish. The quarterly report shall include the following:

- a) A summary of primary construction work during the preceding quarter;
- b) A summary of communications received from the public;
- c) A detailed summary of actions taken to implement environmental mitigation during the preceding quarter; and
- d) A list of the date and time of any PM-10 alert thresholds reached or exceeded during the preceding quarter, and a description of response actions taken.

## **2. PETITIONERS' OBLIGATIONS**

A. Within five (5) days of the Effective Date, Petitioners shall file a motion with the Court to dismiss with prejudice all of Petitioners' claims in the Legal Action and specifying that all Parties shall bear their own attorneys' fees and costs.

B. Petitioners hereby waive, release, and forever discharge on behalf of themselves and their representatives, assigns, and successors, all past and existing claims under local, state, or federal law, against Defendants, Denver, the Developer or any of their current or former directors, officers, agents, elected officials, employees and attorneys, and anyone acting on their behalf, arising either directly or indirectly out of the Project, except any claims identified in Section 2(C). Petitioners shall not directly file, prosecute, bring or fund any suit, claim, or judicial proceeding of any kind against any party relating to the approval or construction of the Project except any claims identified in Section 2(C).

C. This waiver shall not apply to any future claims to seek:

- 1. Enforcement of the terms of this Agreement;
- 2. Remedies for claimed violations of 23 C.F.R. Sec. 771.130 or the redetermination standards in the second and third sentences of 40 C.F.R. Sec. 93.104(d); or
- 3. Implementation of mitigation identified in the ROD.

## **3. PROCEDURES TO CURE BREACH**

A. The Parties acknowledge and agree that specific performance, termination (where explicitly allowed) and injunction are the only appropriate remedies for any breach of this Agreement, and under no circumstances shall monetary damages be allowed for any breach of this Agreement.

B. To avoid termination of this Agreement, an aggrieved party shall first give notice of alleged violations of this Agreement and provide an opportunity to cure the violation. Except for a violation of Section 2(A), 2(B) or 4(A), no legal action for specific performance or injunction shall be brought or maintained until: (a) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach; and (b) within thirty (30) days after receipt of said notice the alleged breaching Party fails to cure the claimed breach or, in the case of a claimed breach which the breaching Party claims cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, or thereafter fails to diligently complete the activities necessary to remedy the claimed breach within a time period acceptable to the non-breaching Party.

#### **4. ADDITIONAL PROVISIONS**

A. The executed Agreement shall be released to the public upon execution of this Agreement. For a period of thirty (30) days after the Effective Date, CDOT, the Elyria and Swansea Neighborhood Association, Chaffee Park Neighborhood Association, and the Colorado Latino Forum shall confer prior to making any other communications regarding the Project or this Agreement, including statements to the media, and shall coordinate press releases and other statements. Each such Party listed above shall provide notice of any draft communication about this Agreement or the Project to the other such Parties at least 24 hours in advance of the release of such statement for a period of thirty (30) days after the Effective Date. Upon execution, such Parties, agree to release a press release/statement, attached as Exhibit C to this Agreement.

B. The Parties agree that they shall bear their own attorneys' fees and costs associated with the Legal Action and none shall seek any fees or costs from any other party to the Legal Action. Petitioners expressly disclaim and waive any right to attorney's fees under any statute, including the Equal Access to Justice Act.

C. The Parties acknowledge that entering into this Agreement is not an admission by either Party of any wrongful or improper actions, but rather reflects the Parties' desire to resolve this matter in a mutually acceptable manner without additional expense or litigation. The Parties agree that this Agreement does not constitute evidence of or an admission of any liability, omission or wrongdoing by either Party. This Agreement shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any party except as may be necessary to prove and enforce its terms in any dispute or action related to any breach of this Agreement.

D. The Parties understand, acknowledge and agree that this Agreement constitutes the entire agreement of the Parties regarding the subject matter and transactions referred to herein. The Parties understand, acknowledge and agree that the terms of this Agreement are contractual in nature and not mere recitals. Petitioners agree to forego litigation of their claims in the Legal Action in consideration for the commitments and actions undertaken by CDOT pursuant to this Agreement. As such, the Parties understand, acknowledge and agree that this Agreement is fully integrated and supersedes all previous oral and written agreements of the Parties.

E. This Agreement shall inure to the benefit of, and be binding upon, the successors, assigns and heirs of the Parties.

F. This Agreement is intended to be self-operative. Notwithstanding the foregoing, the Parties agree that, at the reasonable request of the other Party, they shall execute any further documents or instruments reasonably necessary to effectuate the transactions contemplated by this Agreement.

G. This Agreement may be altered, amended, or modified only by an instrument in writing executed by all Petitioners and CDOT.

H. Any requirement or condition, or a part thereof, of this Agreement imposed on either Petitioners or CDOT may be waived in writing by the other Party at any time after the Effective Date.

I. If any provision of this Agreement is held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected and shall remain in effect. Any legal dispute regarding this Agreement shall be brought in the Denver District Court.

J. The headings used in this Agreement are for the convenience of the Parties only. As such, the headings shall not have any legal effect whatsoever or alter or modify the meaning or interpretation of this Agreement.

K. This Agreement is entered into solely for the benefit of the Parties, and it is not intended to create, nor shall be construed to create any rights or to benefit any other persons, or to be enforceable by any other person. Notwithstanding the foregoing, Denver and the Developer shall be third party beneficiaries to and shall be entitled to enforce the provisions of Sections 2(A) and 2(B) above.

L. No Party shall assign, in whole or in part, this Agreement or any of their respective rights or obligations under this Agreement, without the prior approval of all other Parties.

M. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

N. This Agreement may be executed in counterparts or with signatures obtained via facsimile or scanned transmission, each of which shall have full force and effect.

O. This Agreement shall not take effect until it is signed by the State Controller or its designee, as provided in section 24-30-202(1), C.R.S. provided that the Effective Date shall be as set forth in the first paragraph of this Agreement.

P. Petitioners understand and agree that upon a valid request made pursuant to applicable public disclosure laws, including, without limitation, Section 24-72-101, et seq. (Open Records Act), as presently or subsequently amended, CDOT is obligated to provide the requesting person a copy of this Agreement. Petitioners agree that they shall not hold the State of Colorado or CDOT, or their administrators, officers, agents or employees liable for any information released in compliance with applicable law. CDOT understands and agrees that they or Petitioners may be obligated to provide a copy of this Agreement to State and/or Federal agencies in compliance with

December 20, 2018

applicable law and neither State nor Petitioners may be held liable for any information released in compliance with applicable law.

Q. The Parties expressly warrant that they have carefully and completely read the terms of this Agreement. The Parties expressly warrant that they have reviewed this Agreement with their counsel, have relied upon the advice of their counsel, fully understand and agree to the terms and obligations of this Agreement, and that they enter into this Agreement knowingly and voluntarily, and without coercion, duress or undue influence. The Parties expressly acknowledge that they believe the terms of this Agreement are appropriate to reach a full and final settlement. The Parties expressly understand and agree that once signed, this Agreement shall be forever binding, and no rescission, modification or release of the Parties from the terms of this Agreement shall be made for mistake or any other reasons. The Parties represent that they are legally competent to execute this Agreement and accept full responsibility and assume the risk of any mistake of fact as to any claim brought or which could have been brought, or any other matter between the Parties occurring up to the Effective Date. The Parties further warrant and acknowledge that no promise or inducement has been offered except as set forth herein and that they executed this Agreement without relying on any statement or representation by the persons or Parties released or their representatives concerning the nature or extent of any damages or any legal liability.

On behalf of Petitioners:

**CAUTION: THIS IS A SETTLEMENT AGREEMENT. READ BEFORE SIGNING.**

WHEREFORE, the Parties agree to and do accept the terms of this Agreement.

[Remainder of page left intentionally blank]

PETITIONERS

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Sierra Club

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Elyria and Swansea Neighborhood  
Association

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Chaffee Park Neighborhood Association

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Colorado Latino Forum

STATE OF COLORADO

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Michael P. Lewis  
Director  
Colorado Department of Transportation

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Robert Jaros, CPA, MBA, JD or designee  
State Controller

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Joel Minor  
Earthjustice  
Attorney for Petitioners

BY: \_\_\_\_\_  
Heidi McIntosh  
Earthjustice  
Attorney for Petitioners

BY: \_\_\_\_\_  
Senior Assistant Attorney General Harry Morrow  
Attorney for Colorado Department of Transportation

BY: \_\_\_\_\_  
John E. Putnam  
Kaplan Kirsch & Rockwell, LLP  
Attorney for Colorado Department of Transportation

**Exhibit A**

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (this “MOU”) is made and entered into by and between the Sierra Club, Elyria and Swansea Neighborhood Association, Chaffee Park Neighborhood Association, and Colorado Latino Forum (individually, “Petitioner” and collectively, “Petitioners”); the Colorado Department of Transportation and Michael P. Lewis (together, “CDOT”); the Colorado Department of Public Health and Environment (“CDPHE”) and the City and County of Denver (“Denver”). Petitioners, CDOT, CDPHE and Denver are collectively referred to in this Agreement as the “Parties.” This MOU shall take effect (the “Effective Date”) upon the date when copies of counterparts are delivered to all Parties demonstrating that the Agreement has been executed by the last of each of the signatories identified on the signature page.

**Recitals**

WHEREAS, Petitioners, CDOT and other parties are parties to a legal action (the “Legal Action”) in the United States District Court for the District of Colorado (the “Court”) seeking review of the Record of Decision (“ROD”) issued by the U.S. Department of Transportation, Federal Highway Administration, on January 19, 2017, approving and authorizing federal funding to expand Interstate 70 in Denver, Colorado (the “Project”);

WHEREAS, in 2014, Denver completed a health impact assessment entitled “How Neighborhood Planning Affects Health in Globeville and Elyria Swansea” (the “2014 Assessment”);

WHEREAS, Petitioners, CDPHE and Denver have indicated that there would be benefits to further study and analysis of contributors to adverse public health outcomes in the Globeville, Elyria and Swansea neighborhoods;

WHEREAS, the Petitioners have agreed to dismiss their claims in the Legal Action if, among other things, CDOT commits to having such a community health study performed;

WHEREAS, Petitioners and CDOT have entered into a settlement agreement (the “Settlement Agreement”) in order to avoid additional time and expense with continuing litigation and to forge a permanent resolution of Petitioners’ existing and future claims regarding the legal sufficiency of the ROD approving the Project.

WHEREAS, among other items, the Settlement Agreement provides that CDPHE will procure an independent, qualified contractor with demonstrated expertise (the “Expert”) to conduct the community health study, as further described in the Settlement Agreement and in this MOU.

WHEREAS, the Parties desire to enter into this MOU to set forth the processes that they will undertake to procure the community health study.

## Agreement

The Parties agree as follows:

### 1. Health Study

A. CDPHE will procure an independent, qualified contractor with demonstrated expertise (the “Expert”) to conduct a community health study (“Health Study”) as further described in this MOU. The Health Study shall not be attributed to CDOT or the Federal Highway Administration (“FHWA”) nor shall the outcome of the Health Study be construed to reflect the position or opinion of CDOT or FHWA.

B. CDOT shall contribute the amount of \$550,000.00 for the Health Study to cover the cost of the Expert and up to the amount of \$25,000.00 to cover the cost of the Independent Steering Committee Member identified in Section 3(A)(1)(d) below. **[Sentence re: mechanics of getting the funds to CDPHE or how funds are allocated, etc.]** If other sources of funding become available from sources other than CDOT, their use shall be guided pursuant to the MOU. Costs incurred by CDPHE or Denver relating to their participation in the Health Study shall not be paid from the funds contributed by CDOT.

C. The Health Study shall provide a data-driven assessment of the potential causes of the disparate health outcomes in Globeville, Elyria and Swansea neighborhoods, including but not limited to those disparate health outcomes identified in the 2014 Assessment.

D. Proposed existing and/or new data sources for the Health Study shall be identified by the Expert selected through the procurement discussed in Section 2 below.

E. The Health Study shall consider a full range of possible significant causes of these disparate health outcomes, including without limitation, pollution (air, soil, water, noise) from stationary and mobile sources, socioeconomic factors, barriers to mobility, and availability of healthy foods, such as fresh vegetables.

F. An objective of the Health Study shall be to provide best estimates, as scientifically warranted, of the extent to which these possible significant causes contribute to the adverse health outcomes in Globeville, Elyria and Swansea.

G. The Health Study shall not separately analyze the specific effects of the Project, but shall consider the effects of pollutants, noise and vehicle and rail traffic as part of the overall range of possible significant causes of current and expected future adverse health outcomes.

H. The Health Study shall not identify possible policy measures or make policy recommendations, but shall provide the public and policymakers with information that can help inform future policy discussions.



**2. Procurement of Health Study**

A. The Health Study shall be procured in accordance with \_\_\_\_\_ (the “Procurement Requirements”).

**B. [Add additional CDPHE procurement requirement info here]**

**3. Management of Health Study**

A. The Health Study shall be managed as follows:

1. The Parties shall create a steering committee (the “Steering Committee”) which shall consist of four representatives:

- a) One person designated by CDPHE;
- b) One person designated by Denver;
- c) One person designated by Petitioners; and

d) A nationally recognized and independent expert in the field of public health to be chosen by unanimous vote of the above three representatives (“Independent Steering Committee Member”). The members of the Steering Committee other than the Independent Steering Committee Member shall consult with CDPHE and Denver to develop criteria acceptable to all Steering Committee members for the procurement of the Independent Steering Committee Member, including qualifications, and criteria for evaluation of candidates.

2. Once the Independent Steering Committee Member is selected, the Steering Committee shall develop guidelines consistent with this MOU for the performance of the Health Study, and for the review and approval of budgets, plans, protocols, and work products of the Expert.

3. The Steering Committee also shall consult with CDPHE and Denver to develop criteria for the procurement of the Expert, including qualifications, and criteria for evaluation of candidates.

4. The Expert shall be selected in accordance with the procurement criteria developed pursuant to Section 3(A)(3) above, provided that the Expert must be selected by unanimous agreement of the Steering Committee.

**4. Phasing, Other Procedural Items**

A. The Health Study shall be phased and all notices to proceed must be approved by the Steering Committee.

B. The first phase shall require the Expert to develop a refined scope of work and protocols for the Health Study, including identifying the relevant existing and/or new data to

be used and methodologies to be applied for data collection and analysis. The scope of work and protocols shall be approved by the steering committee.

C. Tasks to be performed and completion dates for subsequent phases shall be proposed by the Expert for consideration and approval by the Steering Committee.

D. Milestone payments to the Expert for the completed phases shall be approved by the Steering Committee based on performance of designated tasks.

E. All decisions of the Steering Committee shall require at least four affirmative votes.

F. The Expert shall develop and propose a schedule for the completion of all phases, including the delivery of a final report to the Steering Committee within four years of the selection of the Expert. The Steering Committee shall approve, or in consultation with the Expert, amend the schedule prior to the Expert initiating the first phase of the Health Study.

G. The Steering Committee shall develop a process to provide regular updates and opportunities to meaningfully engage with community residents and stakeholders in the Globeville and Elyria Swansea neighborhoods. The Steering Committee shall conduct meetings in a manner that assures public access and an opportunity for comment after disclosing proposed actions but before making major decisions, such as defining the scope of the Health Study, approving protocols, accepting completed reports and approving work products.

H. The Steering Committee shall provide quarterly disclosure of communications between its members and persons or parties other than the signatories to this MOU, and access to written materials that are subject to the Colorado Open Records Act.

I. All final reports, data obtained (unless protected from disclosure under the Colorado Open Records Act), sources and final data files prepared by the Expert, methodologies applied to compile and analyze data and the basis for such methodologies shall be made available to the Parties, and shall be posted on a website available for public access.

## **5. Amendment**

A. The Parties may amend this MOU by unanimous agreement from time to time as necessary to reflect their operations and procedures with regard to the Health Study, provided that such amendment is consistent with the Settlement Agreement.

**[Note: Need to determine how this is signed so signature blocks below subject to change.]**

On behalf of Petitioners:

PETITIONERS

\_\_\_\_\_  
DATE

\_\_\_\_\_

STATE OF COLORADO

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Michael P. Lewis  
Director  
Colorado Department of Transportation

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Robert Jaros, CPA, MBA, JD or designee  
State Controller

APPROVED AS TO FORM:

BY: \_\_\_\_\_

Attorney for Petitioners

BY: \_\_\_\_\_

Senior Assistant Attorney General Harry Morrow  
Attorney for Colorado Department of Transportation

BY: \_\_\_\_\_

**DRAFT**

John E. Putnam  
Kaplan Kirsch & Rockwell, LLP  
Attorney for Colorado Department of Transportation

[signature block for Denver]

## Exhibit C

### NEWS FROM:



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December XX, 2018

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### Settlement reached on Central 70 Project

DENVER--The Colorado Department of Transportation (CDOT) and the Sierra Club, the Colorado Latino Forum, the Chaffee Park Neighborhood Association, and the Elyria Swansea Neighborhood Association, represented by Earthjustice, announced today they have reached a settlement agreement in a July 2017 lawsuit filed in the United States District Court for the District of Colorado on the Central 70 Project. This settlement resolves the last remaining legal challenge to CDOT's Central 70 Project, which broke ground in August 2018.

The settlement agreement focuses on providing benefits to the Globeville, Elyria and Swansea communities, including a community health study, air monitoring, landscaping, and community outreach. These commitments are in addition to those already made by CDOT through the course of developing the Central 70 Project.

“This agreement is very much in keeping with the same principles that led CDOT to improve homes and the school in Elyria-Swansea, to provide funding for affordable housing and fresh food, and to construct a 4-acre park over the completed interstate” said Keith Stefanik, CDOT Central 70 project director. “We appreciate the opportunity to resolve these issues and keep this important project on the path toward delivering a safer, less congested I-70 for the community and the hundreds of thousands of Coloradans who travel it every day.”

As part of the agreement, CDOT will contribute \$550,000 for a health study that will provide a greater understanding of public health outcomes in the Globeville, Elyria and Swansea neighborhoods. The health study will be conducted by an independent expert and will be overseen by the plaintiffs, state and local public health agencies, and another independent expert. The study will build on a 2014 Health Impact Assessment conducted by the City of Denver, which stated that Globeville, Elyria, and Swansea residents experience higher incidence of chronic health conditions such as cardiovascular disease, diabetes, obesity, and asthma than other Denver neighborhoods.

“After years of advocacy by hundreds of neighborhood residents and other volunteers to address health disparities faced by north Denver residents, we are pleased with the outcome of this settlement,” said Drew Dutcher, president of the Elyria and Swansea Neighborhood Association. “The Community Health Assessment, which will take a serious look at the disproportionate health hazards our neighborhoods experience, will provide the information needed to ensure that our leaders are able to protect our communities from future adverse impacts.”

“The settlement with CDOT on the Central 70 project is a first step toward identifying and addressing the causes of the serious health disparities between our community and others across Colorado and building a commitment to establishing public health equity,” said Ean Tafoya, treasurer of the Colorado Latino Forum. “We believe that future infrastructure projects have to take community health into account.”

“The Community Health Assessment established in this settlement will be the most comprehensive government-funded study ever conducted on the health status of north Denver residents who live near I-70,” said Lloyd Burton, environmental justice team leader, Colorado Sierra Club. “This settlement provides an independent, credible assessment of the cumulative health impacts of all pollutant sources in the area. It will be a milestone in documenting the environmental health challenges faced by the residents of this community that EPA has recognized as an environmental justice community. Neighborhood advocates, public health professionals, government agencies, and policy makers will now have crucial new data for assessing the impacts of future decisions on north Denver residents’ health and well-being.”

“The settlement with CDOT takes important steps toward addressing the community’s concerns about health, safety and livability in the midst of the I-70 construction project,” said Lucas Merrigan, treasurer of the Chaffee Park Neighborhood Association. “This process demonstrates the importance of working closely with the neighborhoods that will be affected by major construction projects to ensure that risks are minimized and families are safe in their homes.”

Other commitments in the settlement include funding for additional trees and vines along the highway's lowered section and within the Elyria, Swansea and Globeville neighborhoods, monitoring for construction dust (PM10), and deploying best practices for construction oversight and community notification.

No party has admitted any wrongdoing or liability.

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