

# City of Aurora Annexation Process



2022

# City of Aurora Annexation Process

## Introduction

Annexation is the process by which property may be incorporated into the City of Aurora in order to gain urban services.

The city's annexation process follows State Statute C.R.S. 31-12-101 et seq. and City Code Chapter 146, Article 3, Annexations and Disconnections. The Office of Development Assistance (ODA) administers the annexation process. The initial zoning for the property is processed concurrently by the Planning and Development Services Department.

## Annexation Process

1. Meet with a Project Manager in the Office of Development Assistance (ODA) to discuss the property location, proposed land use and to review the annexation process.
2. Meet with the Real Property Services Division of Public Works to determine if the property has the required contiguity with the existing city limits.
3. Meet with the Planning and Development Services Department (Planning) to discuss the Initial Zoning process schedule and requirements. Please note the process may include an amendment to the Aurora Places Comprehensive Plan, as applicable.
4. Meet with the Water Resources Division of the Water Department to discuss the ground water dedication schedule and requirements. Please note, if ground water rights' ownership has been maintained, the annexor must provide ODA with a title commitment to be determined via a title search. The city's Water Resources Division will then match the ground water legal description with the annexation legal description to ensure they align. If any acreage is missing, then the city will conduct a valuation and send an invoice to the annexor. If rights are intact, the Special Warranty Deed (or affidavit to ensure dedication – see item 5 in the Annexation Agreement attachment), found on page 15 of this packet, must be provided to the city prior to the first City Council meeting finding substantial compliance.
5. Submit Annexation application materials on page 3 to ODA.
6. Submit Initial Zoning application materials to Planning. The application materials include a Letter of Introduction (include the initial zoning designation for the project based on the Aurora Places Comprehensive Plan and adjacent zone districts), signed and sealed annexation plat map and legal description of the property as separate .pdf files, a list of abutting property owners and homeowner associations within one mile for notification, and a mineral rights affidavit as necessary. Please work with your Planning Case Manager to compile these materials.

The introduction letter should address the approval criteria found in Section 146-5.4.1.A and Section 146-5.4.1B of the UDO.

Please note the Initial Zoning application and Comprehensive Plan Amendment (if applicable) is presented to the Planning Commission for their recommendation to City Council prior to the introduction of the Initial Zoning Ordinance at the second City Council meeting, as described in item #8, below.

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7. The city files a copy of the Annexation Impact Report with the Board of County Commissioners governing the area proposed for annexation at least 20 days prior to the City Council hearing on the annexation (C.R.S. 31-12-108.5).
8. Three City Council meetings are scheduled to consider and take action on the annexation (and the initial zoning):

### 1<sup>st</sup> City Council meeting

- This meeting will be scheduled once the application materials are complete. In particular, the draft annexation agreement needs to be in substantial compliance with the city's model annexation agreement. Any significant deviations in the agreement that require negotiation will delay scheduling of the finding of substantial compliance.
- City Council considers a Resolution finding the petition for annexation to be in substantial compliance with state statute and giving notice of a public hearing on the proposed annexation. If Council passes the Resolution, the effective date is the date of the Council meeting.
- The City Clerk gives notice of the hearing per C.R.S. 31-12-108, publishing once a week for 4 successive weeks, starting at least 30 days prior to the date of the hearing.

### 2<sup>nd</sup> City Council meeting

- This meeting is scheduled not less than 30 nor more than 60 days after the effective date of the Resolution setting the hearing.
- City Council holds a public hearing and considers a Resolution making certain findings of fact regarding the proposed annexation.
- Introduction of the annexation and initial zoning ordinances.

### 3<sup>rd</sup> City Council meeting

- The final annexation agreement will need to be completed before this meeting will be scheduled.
  - Final reading of the annexation and initial zoning ordinances.
  - Consideration of the annexation agreement for approval.
9. The effective date of annexation ordinance will be 30 days after publication of the final annexation ordinance.
  10. The challenge period is 60 days after the effective date.

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## Annexation Application Materials

Submit all materials, except as noted, to the <u>Office of Development Assistance</u>			
Application Materials		Description	Submittal Format
1	Application fee <i>(to be paid to the Office of Development Assistance, separate Initial Zoning fee applies – see item 9 below)</i>	\$408.00, plus \$7.50 per acre	Check, made out to “City of Aurora”
2	Petition for annexation	See Attachment I, per C.R.S 31-12-107. Contact the ODA Project Manager for a Word version of the petition.	1 in original ink, 2 paper copies
3	Annexation map	See <a href="#">Annexation Map Checklist</a> on Real Property Services portion of city website.	4 paper copies
4	Title commitment	Necessary to verify property owners on petition for annexation.	2 paper copies
5	Annexation impact report	See Attachment II, per C.R.S. 31-12-108.5.	1 digital version
6	Annexation agreement	See Attachment III, City of Aurora Model Annexation Agreement. Prepare a draft annexation agreement in Word Track Changes format, showing any proposed changes to the city’s model annexation agreement, with <del>deletions in strikethrough</del> and <u>additions in underline</u> . Contact the ODA project manager for a Word version of the model.	1 digital version
7	Legal description	This is a separate copy of the legal description from the one required as Exhibit A in the petition for annexation.	1 digital version
8	Vicinity map	This is a separate map from the one required in the annexation impact report. Submit an 8½” x 11” vicinity map showing the property within the context of the surrounding area, at a scale of 1” = 2,000’. The map should show the existing Aurora corporate limits and label surrounding streets.	1 digital version
9	Initial zoning application	Submit this application concurrently with annexation materials, to the <a href="#">Planning and Development Services Department</a> . Separate fees apply – <a href="#">please review Fee Schedule 1 here</a> .	
10	Ground Water Requirements	Special Warranty Deed(s) and/or affidavit for nontributary and not nontributary ground water underlying Property as set forth in Paragraphs 3.6 - 3.8 of the Model Annexation Agreement.	1 digital version

**PETITION FOR ANNEXATION**

TO: THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

The undersigned (the "Petitioners"), being the owners of more than fifty percent (50%) of the property proposed to be annexed, exclusive of public streets and alleys, which property is described in Exhibit A attached hereto and incorporated herein by this reference (the "Property") , hereby petitions the City Council (the "Council") of the City of Aurora, Colorado (the "City"), for annexation of the Property in accordance with the provisions of Title 31, Article 12, Part 1, C.R.S., as amended.

In support of this petition, the Petitioners state the following:

1. It is desirable and necessary that the Property be annexed to the City.
2. The requirements of Sections 31-12-104 and 31-12-105, C.R.S., exist or have been met:
  - a. Not less than one sixth (1/6) of the perimeter of the Property is contiguous with the existing boundaries of the City.
  - b. Contiguity with the City is not established by: (i) use of any boundary of an area: previously annexed to the City that, at the time of its annexation, was not contiguous at any point with the boundary of the City , was not otherwise in compliance with Section 31-12-104(1)(a), C.R.S., and was located more than three miles from the nearest boundary of the City ("Non-Contiguous Area"); or (ii) use of any boundary of territory subsequently annexed directly to, or indirectly connected through subsequent annexations to, a Non-Contiguous Area.
  - c. A community of interest exists between the Property and the City.
  - d. The Property is urban or will be urbanized in the near future.
  - e. The Property is integrated or is capable of being integrated with the City.
  - f. In establishing the boundaries of the Property, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowner unless separated by a dedicated street, road, or other public way.
  - g. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more which, together with the buildings and improvements situated thereon, has a valuation for assessment in excess of \$200,000 for the preceding tax year has been included in the Property without the written consent of the landowner.
  - h. No annexation proceedings have been commenced for the annexation of all or any portion of the Property to another municipality.
  - i. The annexation of the Property shall not result in the detachment of area from any school district or the attachment of area to another school district.

- j. No portion of the Property is more than three miles in any direction from any point of the City boundary as such was established more than one year before this annexation will become effective.
- k. If a portion of a platted street or alley is to be annexed, the entire width of said street or alley is included within the boundaries of the Property.
- l. The Property is not presently a part of any incorporated town, city and county, or city.

3. The petitioners comprise more than fifty percent (50%) of the landowners owning more than fifty percent (50%) of the territory included in the area proposed to be annexed, exclusive of streets and alleys. A legal description of the land owned by each Petitioner is set forth in Exhibit B attached hereto and incorporated herein by this reference.

4. Accompanying this Petition are four copies of an annexation map showing the seal of a registered engineer or land surveyor, containing the following information:

- a. A written legal description of the boundaries of the Property;
- b. A showing of the boundary of the Property;
- c. A showing of the location of each ownership tract in unplatted land and, if part or all of the Property is platted, the boundaries and the plat numbers of plots or of lots and blocks;
- d. Next to the boundary of the Property, a drawing of the contiguous boundary of the City and any other municipality abutting the Property.

5. Accompanying this Petition is a copy of the Special Warranty Deed(s) for the non-tributary and not nontributary water within the Dawson-Arkose, Denver, Arapahoe, and Laramie-Fox Hills aquifers that lie beneath the Property. It is not required that the deed(s) be executed at the time of the Petition, but to the extent that the Petitioners do not deliver original executed Special Warranty Deeds for any said ground water underlying the Property, accompanying this Petition is an affidavit(s) stating that original executed deed(s) can and will be delivered to Aurora prior to approval of the annexation. An original executed Special Warranty Deed(s) for any and all said ground water underlying the Property will be delivered to Aurora prior to scheduling of the final reading and annexation approval before the City Council. To the extent Petitioners cannot deliver the original executed Special Warranty Deed(s) for the non-tributary and not non-tributary water within the Dawson-Arkose, Denver, Arapahoe, and Laramie-Fox Hills aquifers that lie beneath the Property, accompanying this Petition is an affidavit by Petitioners stating Petitioners' current knowledge of the ownership of said water. Prior to scheduling of the final reading and annexation approval before the City Council, Petitioners shall pay to the City the monetary value of that portion of said water beneath the Property not to be deeded to the City. Said deed(s) and monies paid to the City will be held in escrow to be returned to the Petitioners in the event the annexation is not approved by City Council.

6. Prior to the hearing before the City Council on whether to annex the Property, the Petitioners and the City shall have entered into an annexation agreement which shall govern and control the development of the Property within the City (the "Annexation Agreement"). Annexation of the Property shall be conditioned upon the City Council's approval of the Annexation Agreement. Upon the effective date of the ordinance annexing the Property and approving the Annexation Agreement ("Annexation Ordinance"), the Property shall be subject to all of the terms and provisions of the Annexation Agreement.

7. In the event that an Annexation Agreement satisfactory to both the Petitioners and the City is not agreed to on or before the date of the second reading of the Annexation Ordinance, the Petitioners shall have the right to withdraw this Petition at their option and this Petition shall be deemed to be null and void as of the date of this Petition and of no force and effect as if it had never been executed and filed with the City. In such event, no filing fees shall be refunded to the Petitioners by the City.

8. No vested rights to use or develop the Property in any particular way, as defined in Section 24-68-101, et seq., C.R.S., have been requested by the Petitioners from any governmental entity, other than those requested and included in the Annexation Agreement

9. The Petitioners signed this Petition no more than one hundred eighty (180) days prior to the date of filing.

10. The Petitioners shall pay all fees and costs incurred by the City in processing this Petition through the annexation hearing before the City Council.

11. Except as modified by the terms and provisions of the Annexation Agreement, upon the effective date of the Annexation Ordinance, the Property shall become subject to the Charter and all ordinances, resolutions, rules, and regulations of the City, except for general property taxes of the City which shall become effective on January 1 of the next succeeding year following the effective date of the Annexation Ordinance.

12. The Petitioners acknowledge that, upon the effective date of the Annexation Ordinance and subject to the terms and provisions of the Annexation Agreement, the Property, the owners thereof, and the uses thereon shall be subject to all taxes and fees imposed by the City. The Property, the owners thereof, and the uses thereon are also bound by any taxes imposed and voter authorization obtained pursuant to Article X, Section 20 of the Colorado Constitution prior to the annexation of the Property. The Petitioners hereby waive any claims they may have under Article X, Section 20 of the Colorado Constitution related to such taxes and voter authorization.

WHEREFORE, the Petitioners respectfully request that the City Council approve the annexation of the Property.

Petitioners: \_\_\_\_\_  
(Please Print)

By \_\_\_\_\_  
(Insert name and title)

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Date of Signature: \_\_\_\_\_

**AFFIDAVIT OF CIRCULATOR**

The undersigned, being of lawful age, being first duly sworn upon oath, deposes and says:

That (he or she) was the circulator of the foregoing Petition for Annexation of lands to the City of Aurora, Colorado, consisting of ( ) pages, including this page, and that the signature thereon was witnessed by your affiant and is the true signature of the person whose name it purports to be.

Name \_\_\_\_\_  
(Please Print)

\_\_\_\_\_  
(Signature)

STATE OF COLORADO        )  
  )  
COUNTY OF \_\_\_\_\_)

The foregoing Affidavit of Circulator was subscribed and affirmed before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

[S E A L]

My commission expires: \_\_\_\_\_



Exhibit A  
(Legal description of property to be annexed)

Exhibit B  
(Legal description of land owned by each landowner)

Name of owner:

Address of owner:

Legal description of land owned by owner:

Name of owner:

Address of owner:

Legal description of land owned by owner:

## Annexation Impact Report Requirements

Per state statute C.R.S. 31-12-108.5, the Annexation Impact Report shall include:	Provide the information noted " <u>Annexor</u> " below:
<p>(a) A map or maps of the municipality and adjacent territory to show the following information:</p> <p>(I) The present and proposed boundaries of the municipality in the vicinity of the proposed annexation;</p> <p>(II) The present streets, major trunk water mains, sewer interceptors and outfalls, other utility lines and ditches, and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation; and</p> <p>(III) The existing and proposed land use pattern in the areas to be annexed;</p>	<p><b><u>Annexor</u></b>: Provide maps as described, in a scale to fit 8 ½" x 11" format:</p> <p>(I) Information is available from <a href="#">Real Property Services Division</a></p> <p>(II) Information is available from <a href="#">Real Property Services Division</a></p> <p>(III) Information to be provided by <b><u>Annexor</u></b></p>
(b) A copy of any draft or final preannexation agreement, if available;	<i>City will include the draft annexation agreement.</i>
(c) A statement setting forth the plans of the municipality for extending to or otherwise providing for, within the area to be annexed, municipal services performed by or on behalf of the municipality at the time of annexation;	<i>City will include this language:</i> The extension and provision of municipal services to the annexed property will be accomplished in accordance with the terms found in the annexation agreement. The extension of services include: roadways and bridge crossings, water and sewer line, storm drainage construction, park and recreation services, and open space provision.
(d) A statement setting forth the method under which the municipality plans to finance the extension of the municipal services into the area to be annexed;	<i>City will include this language:</i> The additional infrastructure necessary to provide municipal services within the area to be annexed will be the responsibility of the annexor in accordance with the terms found in the annexation agreement and will be accommodated through compliance with standards and payment of fees adopted by the City Council. Annexor shall pay all development fees and, if applicable, the capital impact fee for residential development as established by ordinance for the dwellings to be constructed within the annexation.
(e) A statement identifying existing districts within the area to be annexed;	<b><u>Annexor</u></b> : List all districts shown on the annual tax statement for the property. Include a statement acknowledging the requirement to exclude the property from the fire protection district and, at the City's request, any water and sanitation district (per the model annexation agreement).
(f) A statement on the effect of annexation upon local public school district systems, including the estimated number of students generated and the capital construction required to educate such students.	<p><b><u>Annexor</u></b>: Include a letter from the school district documenting:</p> <ol style="list-style-type: none"> <li>1) The effect of annexation upon the school district; and</li> <li>2) Per City Code Sec. 146-301 (c) School Districts and City Code Sec. 147-48 – Dedication (a) School lands and fees-in-lieu, any agreement with the school district for dedication of land or cash-in-lieu of land, as applicable.</li> </ol>

**2020  
Model Annexation Agreement**

## ANNEXATION AGREEMENT

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between \_\_\_\_\_ ("Annexor") and the City of Aurora, a home rule municipal corporation of the Counties of Adams, Arapahoe, and Douglas, State of Colorado (the "City").

### RECITALS

Annexor is the owner of the property described in Exhibit "A," attached hereto (the "Property") and has filed a petition to annex said property to the City.

In consideration of the foregoing premise and the covenants, promises, and agreements of each of the parties hereto, to be kept and performed by each of them, IT IS AGREED:

#### 1. DEFINITIONS

- 1.1 "Annexor" shall mean and refer to Annexor, and its heirs, successors, assigns, and designees.
- 1.2 "Approvals" shall mean any ordinances, resolutions and/or other written instruments as may be required to effect approval of the annexation, this Agreement and any related zoning approvals in a form that is substantially consistent with the applications Petitioner submits in connection with the Petition.
- 1.3 "Capital Impact Fee" shall mean the City's fee established by City Council that shall be levied and assessed on a per-unit basis (residential uses) as a condition of issuance of a building permit for the purpose of defraying the projected impacts on capital facilities of the City caused by proposed development.
- 1.4 "City" shall mean the City of Aurora, Colorado.
- 1.5 "City Code" shall mean the City Code of the City of Aurora, Colorado.
- 1.6 "City Council" shall mean and refer to the City Council of the City.
- 1.7 "Crossings" shall mean and refer to all bridges, culverts, or other types of facilities or structures used to cross roadways, drainage ways, or storm drainage areas.
- 1.8 "Drainage Master Plan" shall mean the overall plan developed by the Director of the Water Department that addresses various matters relating to storm drainage

within the City, including the identification of drainage and flooding problems, the compilation of base data related to rainfall and runoff, proposals for controlling storm water flows, and cost control measures regarding the construction, operation and maintenance of drainage facilities.

- 1.9 "Freeboard" shall mean the vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed."
- 1.10 "Legal Challenge" shall mean either any third party commences any legal proceeding or other action that directly or indirectly challenges the City's annexation of the Property or the City's granting of the Approvals; or any third party submits a petition for a referendum seeking to reverse or nullify any of the Approvals.
- 1.11 "Major Drainage Facility" shall mean those drainage facilities as defined in Section 138-361 of the City Code that provide conveyance or detention of storm water from areas equal to or greater than 130 acres in area as identified in the City's Drainage Master Plan
- 1.12 "Minor Drainage Facility" shall mean those drainage facilities as defined in Section 138-361 of the City Code that provide conveyance or detention of storm water from areas less than 130 acres in area.
- 1.13 "Park Development Fee" shall mean the City's fee established by City Council, payable at the time building permit issuance, that the City charges to offset the costs to the City of improvements to public park lands that are required to address the impacts to such parks from development on the Property.
- 1.14 "Petition" shall mean the Petition for Annexation that Annexor executed and submitted to the City on [\_\_\_\_\_,]20\_\_\_\_.
- 1.15 "Property" shall mean the real property described in Exhibit A, attached hereto and incorporated herein by reference.
- 1.16 "Sewer Interceptor Development Fee" shall mean the City's fee established City Council, payable at the time of subdivision platting, that the City charges for extension by the City of sewer interceptor lines and other improvements necessary to provide sanitary sewer service to development on the Property.
- 1.17 "Sewer Interceptor Lines" shall mean and refer to sewer lines larger than twelve inches (12") in diameter.

- 1.18 "Siren Fee" shall mean the City's established by City Council, payable at the time of subdivision platting, that the City charges for providing public safety warning sirens to serve the Property.
- 1.19 "Storm Drainage Development Fee" shall mean the City's fee established by City Council, payable at the time of subdivision platting, that is levied and assessed upon each vacant and undeveloped lot and parcel of land within the City for the purpose of funding the construction and installation of major facilities in accordance with the Drainage Master Plan
- 1.20 "Streets" shall mean and refer to local, residential, commercial, collector, minor, and principal arterial streets, highways, expressways, and roadways.
- 1.21 "Water Transmission Lines" shall mean and refer to water lines larger than twelve inches (12") in diameter.
- 1.22 "UDO" shall mean and refer to the Unified Development Ordinance adopted by City Council as may be amended from time to time.

## 2. STREETS

2.1 Annexor shall dedicate free and clear of all liens and encumbrances of any kind, all rights-of-way for public streets for the full width thereof, as required by the City. Annexor shall design and fully improve to City standards all public streets within the Property, and one-half of all streets lying on or abutting the exterior boundaries of the Property, without cost to the City. Such dedication of streets shall occur at the time of City approval of each subdivision plat within the Property; however, Annexor agrees to dedicate such rights-of-way at an earlier time when determined by the City to be required for commencement of construction of such streets or for extension of utilities. An earlier dedication shall not relieve Annexor of its obligation to improve streets as provided herein.

2.2 Annexor agrees to convey to the City an easement in gross adjoining arterials, highways, and expressways to provide necessary cut and fill to establish the grade on a one-foot incline for every three-feet (3') of distance. Said easement shall be released to Annexor at such time as the adjacent property is filled and maintained at grade.

2.3 Annexor agrees to include the Property in districts or other mechanisms established by the City for improvement of roadways.

2.4 Annexor will pay or escrow the proportional share of the traffic signalization cost of perimeter and internal streets necessitated by the associated development as determined by an approved traffic impact analysis or by the City traffic engineer at such time as is required by City Code.

### 3. WATER AND SEWER

3.1 The Annexor will be required to install Water Transmission Lines, Water Pump Stations, Sewer Interceptor Lines, Sewer Pump Stations, Stormsewer Infrastructure and required ancillary facilities required to serve the property in accordance with the most recent respective citywide utility master plan if the infrastructure is not yet in place. Annexor agrees to dedicate all necessary unobstructed right-of-way for utility easements needed for water, sewer and stormwater infrastructure to serve the Property, or for regional infrastructure through or on the Property, per the requirements outlined in Chapter 138 of City Code. Annexor shall grant additional temporary construction easements for installation of water and sewer infrastructure where required by the City. Annexor agrees to develop and provide to the City for review and approval prior to platting of the Property a master utilities plan for the annexed area. The master utilities plan shall describe collection facilities and distribution facilities.

3.2 Subject to Section 3.3 herein, the City shall provide water and sewer service to the Property after notification of need by Annexor as required for development of the Property but not before the timing identified in the most recent respective water, wastewater or stormwater master plan. Annexor agrees to pay to City all applicable fees per the most recent published fee schedule and timing established therein. The fee amount shall be that in effect at the time of payment. Annexor further agrees to make additional payments on the balance of the sewer interceptor fee as may be required from time to time to extend sewer interceptor lines to serve the Property as needed for development. In the event, however, that the total amount of such fees is insufficient to fund extension of the line, Annexor shall advance the necessary funds to pay for the total cost to design and construct extension of water transmission and sewer interceptor line extensions. Annexor may proceed under a separate agreement with City for payback of costs in excess of fees.

3.3 There shall be no duty or obligation upon the City to furnish water or sanitary sewer facilities to the area sought to be annexed until such time as, in the sole discretion of City, sufficient acreage has been annexed and fees paid to pay for extension of water and sewer facilities and to provide services to a sufficient number of inhabitants within the areas so as to make the construction and establishment of such services feasible. The City's obligation to provide water is subject to any water restrictions and rate modifications that the City Council enacts under its general police power including, but not limited to, drought management plans and regulations adopted by the City Council and/or the Director of the Water Department pursuant to City Code.

3.4 Notwithstanding the fees provided in this Article III, if provision of water and sewer services requires payment of fees or charges to regional or metropolitan service



agencies or other third party authorities, Annexor shall provide such funds as and when required by such service agency.

3.5 Annexor will pay connection fees as are required by the City at the time identified in the most recently published fee schedule. Annexor agrees that all promises of water and sanitary sewer service made by this Agreement are subject to any water and sewer tap allocation program of the City, and are uniformly applied subject to any other general restrictions of the City, or regional service agencies, relating to the provision of water and sanitary sewer service.

3.6 Accompanying the Petition for Annexation, Annexor shall deliver to City copies of special warranty deed(s) for the non-tributary and not non-tributary water within the Dawson-Arkose, Denver, Arapahoe, and Laramie-Fox Hills aquifers that lie beneath Annexor's Property, along with an affidavit(s) by Annexor that the original fully executed deeds conveying ownership, right and title to the ground water will be delivered to the City prior to scheduling of the final reading and approval of the annexation by City Council. In addition to standard warranties of a deed of this type, the special warranty deed shall specifically warrant that the grantor has not divested any ownership, right or title to the subject non-tributary and not non-tributary ground water prior to its conveyance to the City. The special warranty deed shall be substantially in the form of the sample deed attached hereto and shall be held in escrow until the annexation is approved by City Council.

3.7 Annexor grants in perpetuity to the City the sole and exclusive right to claim, own, withdraw, appropriate, and use any and all water within the Dawson-Arkose, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Property. Annexor irrevocably consents in perpetuity, pursuant to Section 37-90-137(4) of the Colorado Revised Statutes, as now existing or later amended, to the withdrawal, appropriation, and use by the City of all such water, and agrees to execute any additional or supplemental consents thereto that may be required for the City to withdraw, appropriate, or use said water.

3.8 Annexor agrees that if it does not have the sole and exclusive right to any or all of the non-tributary and not non-tributary water that lies beneath the Property and for this reason or for other reasons, cannot comply with the requirements set forth in paragraphs 3.6 and 3.7, above, Annexor is to satisfy the following requirements:

3.8.1 Accompanying the Petition for Annexation, Annexor is to deliver to the City an affidavit by the Annexor stating the Annexor's current knowledge of the ownership of the nontributary and not nontributary ground water underlying the Property that cannot be conveyed to the City.

3.8.2. Prior to the scheduling of the City Council meeting for final reading and approval of the annexation ordinance, Annexor shall deliver the following to the City:

3.8.2.1. A report containing the following information to be prepared by a person skilled in the knowledge of water rights: 1) the amount of ground water underlying the Property available for appropriation using parameters and information developed by the State Engineer, as well as more site specific information, if available; 2) the amount of ground water underlying the Property that was appropriated prior to July 6, 1973; 3) a description of any decreed rights to ground water underlying the Property and 4) any other information relevant to the use and ownership of the ground water underlying the Property

3.8.2.2. The monetary value of the ground water underlying the Property that is unavailable to Annexor for conveyance to the City by Special Warranty Deed. This excludes ground water appropriated by entities other than Annexor and within the purview of C.R.S. §§ 37-90-137(5) and 37-90-107(7)(b). The value shall be determined based on the amount of ground water underlying the Property as determined in the report prepared pursuant to subparagraph 3.8.2.1., above, and the ground water values as determined by the Water Department. The ground water values are set forth in the current City of Aurora fee schedule.

3.8.2.3. For annexations of ten acres or less in total area, the Annexor has the option to satisfy the requirements of subparagraph 3.8.2.1 and 3.8.2.2., above, or pay to the City a sum equal to the values set forth in the current City of Aurora fee schedule.

3.9. The Director of the Water Department shall make a determination if Annexor has satisfied the requirements set forth in paragraphs 3.5 through 3.8., above, and in his/her sole discretion may modify the requirements if justified by special circumstances.

3.10. The drilling of water wells upon the Property shall not be commenced or undertaken without the prior approval of the City Council. To the extent that the City wishes to drill wells on the Property, the location of such wells shall not affect materially the development plan. Annexor agrees to convey necessary easements to City for wells.

#### 4. STORM DRAINAGE

4.1 Annexor shall pay the fees required by the most recently published fee schedule and at the timing identified therein.. The amount payable shall be pro rata based upon the total acreage of each plat.

4.2 In the event Annexor desires to complete the development of any portion of the annexed lands prior to completion of the Major Drainage Facilities by the City,

Annexor may make those improvements at its own expense. At its option, and subject to a separate agreement, the City may agree to reimburse Annexor at a future date for Annexor's cost, or a portion thereof, for construction of said improvements.

4.3 Annexor shall be responsible for the design and construction of Minor Drainage Facilities as identified in the corresponding Major Basin Master Drainage Study, Outfall Systems Plan, or Local Master Drainage Study.

4.4 It shall be the responsibility of Annexor, at its sole expense, to provide adequate drainage, control, and conveyance of storm water as described in Section 138-366 of the City Code. Annexor shall dedicate all land within the 100-year floodplain plus the additional area needed to provide conveyance of runoff for two feet of freeboard above the base flood elevation and/or the channel stability width as identified by Urban Drainage and Flood Control District, whichever is greater including a maintenance trail corridor at the time of platting of any property located adjacent to the floodplain.

## 5. CROSSINGS

5.1 The parties mutually agree that whenever it is found and determined by the City that a crossing of drainage way, existing or proposed roadway, railroad, or any impediment to a roadway is required within the Property, the City shall specify design criteria, and Annexor shall construct the crossing, including transition improvements, in conjunction with the development of the Property. The crossings required for the described Property shall be constructed in conformance with City standards.

5.2 If a crossing is required on the exterior boundary of the Property, Annexor shall be responsible for its proportionate share of the construction cost as determined by the City.

## 6. PUBLIC LAND DEDICATION

6.1 Annexor agrees to dedicate land to the City to be used for public purposes, or pay cash-in-lieu of land if required by the City. The dedication of public land intended for parks and open space purposes shall comply with the requirements of the City Code as may be subsequently amended by the City Council. Land dedicated for public uses other than parks and open spaces shall equal one percent (1%) of residentially-zoned property and two percent (2%) of the property zoned non-residential. Dedication of public land for parks and open space purposes shall occur, by subdivision plat or separate document at the discretion of the City, at time of first subdivision plat within the Property or in accordance with timing/phasing requirements specified in a planning document for the Property approved by the City. All dedicated lands shall be platted by Annexor at the time of dedication in accordance with the City's subdivision regulations. The external boundaries of the dedicated land shall be monumented on the ground as required by the City Code.

6.2 In the event Annexor dedicates land within the Property pursuant to Section 6.1, Annexor shall meet all the standards for acceptance by the City as enumerated herein. All such dedicated or conveyed real property shall be dedicated for the perpetual use and benefit of the public by the dedication language of the relevant subdivision plat or shall be conveyed to the City by general warranty deed free and clear of mortgages, deeds of trust, and other liens of whatever sort, and be free and clear of other restrictions, reservations, exceptions, covenants, easements, rights-of-way, severed mineral interests and other encumbrances (except easements of record), and other encumbrances or natural conditions, except for those to which the City had no reasonable objection in light of the intended use of the site, at no monetary cost to the City. Said land shall have zoning to permit the intended use.

6.3 In the event the City requires cash-in-lieu of land dedication pursuant to Section 6.1, Annexor shall pay money to the City in an amount equal to the fair market value of the land required for parks and open spaces. Said fair market value shall be based on the amount of land as if vacant, zoned for the intended use(s) and with public improvements, including but not limited to water, sanitary sewer, storm drainage, streets, curb, gutter and sidewalk, available to the perimeter of the property being valued.

6.4 Promptly upon applying for any subdivision plat within the Property, the approval of which will trigger any cash-in-lieu of land dedication payment, Annexor shall notify the City and commence negotiations to agree upon the amount of said payment. If available, Annexor shall submit to the City a copy of an appraisal from a certified general appraiser on the subject land current within six months of the date of submittal. If the parties cannot agree upon the amount of any cash-in-lieu payment required by this Agreement, each party shall appoint an appraiser of its choosing, whose fees shall be paid by the appointing party. If the two appraisers thus appointed cannot agree on the amount, they shall jointly appoint a third appraiser whose fees shall be paid half by Annexor and half by the City. The amount shall be the average of the two appraisal amounts (out of three appraisals) that are closest to one another in value. Until the amount is established as provided in this Section 6.4, the City shall not approve the plat that triggers the cash-in-lieu payment at issue to proceed to final approval. The City agrees to respond with reasonable promptness in all matters regarding determination under this Section 6.4 so as to minimize the platting delay, if any, to Annexor.

6.5 Annexor agrees that if between the time of annexation and subdividing, any of the described Property is rezoned from a nonresidential to a residential classification, or a residential zoned area is rezoned to a higher density, the City may require additional land dedications or cash-in-lieu of land dedication at the time of subdivision platting.

6.6 To the extent the described Property is to be zoned residential, Annexor shall dedicate land for public schools as required by City Code Section 147-48. All land dedication or cash-in-lieu of land dedication for schools shall be due at the time of the platting of the first residential subdivision. Land dedicated for schools shall comply with the requirements of City Code.

6.7 Annexor agrees that lands to be dedicated for parks and open spaces and public purposes shall include all site and public improvements including, but not limited to water, sanitary sewer, storm drainage, streets, curb, gutter and sidewalk. Annexor shall install such improvements when determined by the City to be necessary. (Alternatively, if determined by the City at the time of conveyance that the improvements are not needed at that time, then Annexor shall enter into a separate agreement specifying when and how the improvements will be made). No lands to be dedicated for public purposes shall be disturbed by Annexor in any manner to disrupt the natural landscape, unless first approved by the City. Annexor agrees that all lands donated to the City shall not be used as a borrow pit or fill area. Any sites dedicated for public purposes, but disturbed due to grading of adjacent sites, or lands within the flood plain disturbed due to storm drainage improvements, must be successfully planted or seeded by Annexor with native grasses acceptable to City to prevent erosion.

6.8 Annexor agrees to pay to City the Park Development Fee.

## 7. URBAN SERVICES

7.1 Annexor agrees, pursuant to City Code Section 146-301, that the annexation of the Property to the City shall not create any additional cost or impose additional burden on the existing residents of the City to provide such public facilities and services to the Property after annexation. Annexor agrees that it shall be responsible for mitigating such impacts through compliance with standards and payment of fees that are adopted by the City Council, and that are generally applied and uniform in application to similarly situated properties. The standards and fees will be used to provide adequate public facilities and services to the development. Annexor shall pay the Capital Impact Fee for residential development as established by ordinance for the dwellings to be constructed within the Property.

7.2 Annexor shall petition for exclusion from any fire protection district that is reflected within the County Assessor's "Certificate of Taxes Due" upon completion of the annexation and approval of zoning. Annexor will use reasonable efforts to complete the exclusion and obtain the exclusion order before the first subdivision plat for the Property is approved by the City. At no cost to the City, the City agrees to cooperate and assist with Annexor's efforts to complete exclusion from the fire protection district. City shall provide fire protection upon exclusion of the property from the district. It is expressly understood that the City may be unable to provide fire protection to any of the annexed land prior to the installation of required fire hydrants by Annexor.

7.3 If the area of the herein described annexation lies wholly or partially within a legally constituted water, sanitation, or water and sanitation district, there shall be no obligation on the part of the City to provide such utilities services to the areas within any such district, unless it is done by mutual agreement between the City and such district. However, if requested by the City, Annexor shall petition for exclusion from the district. In the event of exclusion, the City shall assume responsibility for service to the annexed area, and Annexor shall comply with all applicable utilities service provisions contained herein.

7.4 Annexor shall pay the Siren Fee established by City Council, at the time of subdivision plat approval to be used by the City to fund emergency warning sirens in the area. If requested by City, Annexor shall provide a minimum of ten (10) foot by ten (10) foot easement to locate the siren and tower.

## 8. GENERAL PROVISIONS

8.1 In accordance with Section 8.5 below, this Agreement shall be recorded with the Clerk and Recorder in \_\_\_\_\_ County, Colorado, shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto. Annexor shall have the right to assign or transfer all or any portion of its interest, right, obligations under this Agreement to third parties acquiring an interest or estate in the Property, or of any improvements now or hereafter located on the Property, provided that to the extent Annexor assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of Annexor's obligations under this Agreement by its assignee or transferee shall, upon written notice to the City, thereby relieve Annexor of any further obligations under this agreement with respect to the matter so assumed. Annexor shall notify the City of assignments and the names of assignees. Every part of the Property shall at all times remain subject to all the obligations of this Agreement with respect to each and every part of the Property.

8.2 In order to facilitate construction of improvements and subject to the City's rights of review and approval under the laws of the State of Colorado and the City Code, City will consider the creation of one or more districts including, but not limited to special and general improvement districts authorized pursuant to Title 31, C.R.S., and special districts authorized pursuant to Title 32, C.R.S., to provide for the financing of public improvements. Annexor agrees that any special district established within the Property shall not levy, charge, or collect a sales tax, nor shall such district apply for or request Colorado Conservation Trust Funds as supplemented by the state lottery.

8.3 By entering into this Agreement, the City does not repeal any existing codes or ordinances, nor does the City intend to waive, limit, or impair its legislative, governmental, or police powers to adopt ordinances and regulations that apply to the property. No term or provision of this Agreement shall prohibit the enactment by the

City Council or future City Councils of any fee, assessment, or ordinance applicable to the Property that is of general application to properties similarly situated.

8.4 No right or remedy of disconnection of the described Property from the City shall accrue from this Agreement, other than that provided by UDO §5.4.1.B. In the event the Property or any portion thereof is disconnected at Annexor's request, City shall have no obligation to serve the disconnected Property and this Agreement shall be void and of no further force and effect as to such Property.

8.5 This Agreement will not be recorded prior to the occurrence of final, non-appealable approval after expiration of all Legal Challenge periods applicable to the Approvals.

8.5.1 If annexation of the Property, any portion thereof, and/or any of the other Approvals is subjected to a Legal Challenge (whether by referendum or court action), the City and Annexor will be bound during the pendency of the Legal Challenge only by those provision of this Agreement that govern the parties' obligations prior to recording of this Agreement as contemplated in Section **Error! Reference source not found.**; provided, however, all provisions of this Agreement that govern the parties' obligations after recording of this Agreement as contemplated in Section **Error! Reference source not found.**, together with the duties and obligations of each party, shall be suspended pending the outcome of the Legal Challenge.

8.5.2 If a Legal Challenge results in a final, non-appealable invalidation of the Property's annexation, then this Agreement and all provisions contained herein shall be null and void and of no further effect.

8.5.3 If a Legal Challenge to any of the other Approvals results in a final, non-appealable invalidation of such Approval(s), the City and Annexor shall cooperate to cure the legal defect that resulted in such invalidation such that annexation of the Property may be made legally effective in accordance with the terms and conditions of the Petition.

8.5.3.1. Upon such cure this Agreement shall be deemed to be an agreement to annex the Property to the City pursuant to Section 31-12-121 of the Colorado Revised Statutes. As and when the Property becomes eligible for annexation as determined by City, Annexor shall reapply for annexation by submitting a petition for annexation in a form that is materially consistent with the Petition.

8.5.3.2. If the City and Annexor are unable to cure the legal defect such that annexation of the Property may be made legally effective in accordance with the terms and conditions of the Petition, the Petition

shall be deemed withdrawn and annexation of the Property shall not proceed or be made legally effective.

8.5.4 If a Legal Challenge to annexation of the Property or to any of the other Approvals results in a final, non-appealable validation of the annexation or other Approvals, Annexor and the City shall be bound by all terms and provisions of this Agreement and, in accordance with the terms of the Petition, this Agreement shall be legally binding on the Property from and after the date on which this Agreement is recorded in pursuant to Section **Error! Reference source not found.**

8.7 It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

8.8 All fees recited in this Agreement shall be subject to amendment by the City Council. Any amendment to fees shall be incorporated into this Agreement as if originally set forth herein. Nothing in this Agreement shall prevent, prohibit, diminish, or impair the City's home rule governmental authority to adopt fees or regulations to address the impacts of development.

8.9 Annexor agrees to include the Property in special and general improvement districts as may be organized by the City at any time pursuant to the provisions of Title 31, Article 25, Parts 5 and 6, of the Colorado Revised Statutes.

8.10 This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided in Section 8.8, there shall be no modification of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

8.11 This Agreement shall terminate and expire upon the completion of the development of the Property and satisfaction of all the obligations herein. Thereafter, so long as the Property is located within the municipal boundaries of the City, it shall continue to be subject to the charter, ordinances, and rules and regulations of the City.



8.12 It is expressly understood and agreed that enforcement of the terms and conditions this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, their heirs, successors, and assigns, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

8.13 Any and all obligations of the City for water, sewer, and drainage improvements shall be the sole obligation of the City's Utility Enterprise and as such, shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of any constitutional, statutory, or charter limitation. Any and all obligations of the City for public improvements other than water, sewer, and storm drainage improvements shall be subject to annual appropriation by the City Council.

8.14 In the event of breach or default by the City, the sole remedies hereunder shall be the equitable remedies of specific performance or injunction. Annexor hereby waives any rights to money damages for any such breach or default.

\_\_\_\_\_, ANNEXOR

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

Notary Public

City of Aurora Model Annexation Agreement  
AuroraMAA2020.doc  
Updated January 2020

CITY OF AURORA, COLORADO

By \_\_\_\_\_  
MIKE COFFMAN, Mayor

ATTEST:

\_\_\_\_\_  
KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
BRIAN J. RULLA, Assistant City Attorney

# SPECIAL WARRANTY DEED

This Deed is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, whose address is \_\_\_\_\_, \_\_\_\_\_ County, Colorado \_\_\_\_\_ ("Grantor") and the City of Aurora, Colorado, a Colorado municipal corporation of the State of Colorado, acting by and through its Utility Enterprise, whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Arapahoe County, Colorado 80012 ("Aurora").

WITNESSETH

That Grantor for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, in hand paid by Aurora, the receipt, adequacy, and sufficiency of which is hereby acknowledged, hereby sells and conveys to Aurora the following real property, being water rights and rights to water that are located in the County of \_\_\_\_\_, State of Colorado, to wit:

All ground water from non-tributary and not non-tributary sources in the Dawson (A.K.A. Dawson-Arkose), Denver, Arapahoe and Laramie-Fox Hills Aquifers, including but not limited to water and water rights in any upper and lower aquifers, if any such aquifers are so subdivided, lying under approximately \_\_\_\_\_ acres of land owned by the Grantor, being more particularly described in Exhibit \_\_\_\_\_ attached hereto and made a part hereof. This grant includes any water and water rights decreed in Water Division 1, Case No. \_\_\_\_\_ or water permitted under Well Permit No. \_\_\_\_\_ or Ground Water Commission Permit No. \_\_\_\_\_. [References to Water Court Case No.s, Well Permit No.s or Ground Water Commission Permit No.s should be included if applicable].

Together with all appurtenances and the Grantor warrants the title to the same against all persons claiming under it, forever, provided; however, Grantor does not warrant the quantity or quality of water available through the exercise of the above conveyed water rights and rights to water. Grantor further specifically warrants that it has not divested itself of the subject non-tributary and not non-tributary water rights and right to water prior to its conveyance to the City.

In witness hereof, the Grantor has executed this Deed on the date set forth herein above.

GRANTOR:

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STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

The foregoing Special Warranty Deed was acknowledged before me by \_\_\_\_\_, Grantor.

Witness my hand and seal affixed on this day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires \_\_\_\_\_

Notary Public

[SEAL]