



# NOTICE OF COUNCIL MEETING

MONDAY, December 18, 2023

Members of the public and media are invited to attend in person or remotely through the options listed below. Public comment is welcome for items appearing on the agenda or on any matter of city concern. One hour is dedicated to public comment on non-agenda items at the beginning of every council meeting (Public Invited to be Heard). Each speaker is allotted a maximum of three minutes to speak.

Individuals wishing to comment during 'Public Invited to be Heard' or on an agenda item may register in advance. Online registration begins at 8 a.m. on the Friday before the meeting date, and ends at noon on Monday, the day of the meeting. To register in advance, visit the city's website at [www.auroragov.org/PublicComment](http://www.auroragov.org/PublicComment).

## View or Listen Live

Live streamed at [www.auroraTV.org](http://www.auroraTV.org) and [Youtube.com/TheAuroraChannel](https://www.youtube.com/TheAuroraChannel)

Cable Channels 8 and 880 in Aurora

Call: 885-695-3475

## In-person Participation

Members of the public may participate in-person at the Aurora Municipal Center, Paul Tauer Aurora City Council Chamber, 15151 E. Alameda Pkwy. The building will open at 6:00 p.m. on the day of the council meeting.

- Individuals wishing to comment during 'Public Invited to Be Heard' must submit a speaker slip by 6:30 p.m.
- Individuals wishing to comment on an agenda item must submit a speaker slip before the city clerk reads the title of the item.

## Call-in Participation

Call the live public comment line at 855-695-3475 and press \*3 to reach the operator. The public call-in line opens at 6 p.m. on the day of the Council Meeting.

- Individuals calling in to comment during 'Public Invited to Be Heard' must call in and be in the queue by 6:30 p.m.
- Individuals calling to comment on agenda items must call in and be in the queue before the City Clerk reads the title of the item. Once the Clerk reads the title, no additional calls for that item will be accepted.

## Translation/Accessibility

The city provides closed captioning services on Cable Channels 8 and 880. The Aurora Municipal Center is wheelchair accessible with entry ramps and accessible parking located on the west and east side of the building. Please make your request for accommodations or assistance by noon on the Friday preceding the Monday meeting by contacting the City Clerk's Office at 303-739-7094.

If you are in need of an interpreter, please contact the Office of International and Immigrant Affairs at 303-739-7521 by Sunday, December 17 at 9:00 a.m. (Si necesita un intérprete, comuníquese con la oficina de asuntos internacionales e inmigrantes en 303-739-7521 por el domingo anterior a la reunión del lunes.)

For more information regarding public meetings, please contact the City Clerk's Office at (303) 739-7094 or by email at [CityClerk@auroragov.org](mailto:CityClerk@auroragov.org) or visit [www.auroragov.org](http://www.auroragov.org).



City of Aurora, Colorado

MONDAY, December 18, 2023

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**AURORA URBAN RENEWAL AUTHORITY (AURA) EXECUTIVE SESSION**

(Closed to the Public)

AURORA ROOM

5:10 p.m.

**EXECUTIVE SESSION OF THE AURORA CITY COUNCIL**

(Closed to the Public)

AURORA ROOM

5:35 p.m.

**REGULAR MEETING OF THE AURORA CITY COUNCIL**

(Open to the Public)

PAUL TAUER AURORA CITY COUNCIL CHAMBER

6:30 p.m.



## AGENDA

### Regular Meeting of the Aurora City Council

Monday, December 18, 2023

6:30 p.m.

Paul Tauer Aurora City Council Chamber

15151 E Alameda Parkway

Aurora, CO 80012

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Pages

1. CALL TO ORDER

2. ROLL CALL

3. INVOCATION/MOMENT OF SILENCE

4. PLEDGE OF ALLEGIANCE

4.a Boy Scout Troop Leading the Pledge of Allegiance

5. EXECUTIVE SESSION UPDATE

6. APPROVAL OF MINUTES

6.a December 4, 2023 Meeting Minutes

13

7. PROCLAMATIONS OR CEREMONIES

7.a Swearing-in Ceremony of City Manager Jason Batchelor

Shawn Day, Presiding Judge

8. PUBLIC INVITED TO BE HEARD

(non-agenda related issues only)

9. ADOPTION OF THE AGENDA

## 10. CONSENT CALENDAR - MOTIONS

*Any member of Council may request an item be removed from Consent Calendar and considered separately. Removed items are considered immediately following the adoption of the Consent Calendar.*

### 10.a Motions

- |        |  |    |
|--------|--|----|
| 10.a.1 | <b>Consideration to AWARD A CHANGE ORDER TO AN OPENLY SOLICITED CONTRACT to Carollo Engineers, Inc., Broomfield, CO in the Amount of \$214,841.00 for the Wemlinger Water Purification Facility (WPF) Electrical and Communications Improvements Project</b>   | 21 |
|        | Swirvine Nyirenda, Project Delivery Services Manager, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney   |    |
| 10.a.2 | <b>Consideration to AWARD A CHANGE ORDER TO AN OPENLY SOLICITED CONTRACT with Dewberry Engineers, Inc., Denver, Colorado in the Amount of \$185,272.00 to Provide Services During Construction for the Piney Creek Lift Station Power Improvements Project</b> | 31 |
|        | Andrea Long, Principal Engineer, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney  |    |
| 10.a.3 | <b>Consideration to AMEND AN OPENLY SOLICITED CONTRACT with Cumming Management Group, Inc., Englewood, CO in the Amount of \$172,500.00 for Staff Augmentation for Aurora Water Project Management Services, Project NO R-2295</b>                             | 41 |
|        | Sarah Young, Assistant General Manager of Planning and Engineering, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney   |    |
| 10.a.4 | <b>Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Oalminagorta Consulting, LLC., Nibley, UT in the Amount of \$162,240.00 for Water Resources Modeling Services Staff Augmentation, Project NO. R-2383</b>   | 46 |
|        | Sarah Young, Assistant General Manager of Planning and Engineering, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney   |    |

<b>10.a.5</b>	<b>Consideration to APPROVE A CHANGE ORDER TO AN EMERGENCY CONTRACT to TRS Corp, Englewood, CO in the Amount of \$126,000.00 for Professional Review Services for the Development Review Backlog On Call Contract, through June 30, 2024</b>	<b>50</b>
	Darren Akrie, Land Development Review Supervisor, Public Works / Hanosky Hernandez, Senior Assistant City Attorney	
<b>10.a.6</b>	<b>Residential Roof Inspection Services – Safebuilt Colorado</b>	<b>54</b>
	Consideration to AWARD A COMPETITIVELY BID CONTRACT to Safebuilt Colorado, LLC, Loveland, Colorado in the Amount Not-to-Exceed \$750,000.00 for Residential Roof Inspection Services as Required for Building Permit Requests through December 31, 2024; B-4712	
	A waiver of reconsideration is requested to ensure the associated contract can be executed by December 31, 2023 and have all funding encumbered.	
	David Schoonmaker, Manager of Building Services, Public Works / Hanosky Hernandez, Senior Assistant City Attorney	
<b>10.a.7</b>	<b>Consideration to AWARD A SOLE SOURCE CONTRACT in the Amount of \$374,400 to Falck Rocky Mountain Inc, Aurora, Colorado to Provide Medical Health Staffing Services for the Aurora Mobile Response Team</b>	<b>57</b>
	Courtney Tassin, Crisis Intervention Program Manager, Housing and Community Services / Hanosky Hernandez, Senior Assistant City Attorney	
<b>10.a.8</b>	<b>American Rescue Plan Act Funding Agreement Aurora Housing Authority</b>	<b>64</b>
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.9</b>	<b>American Rescue Plan Act Funding Agreement Aurora Mental Health and Recovery</b>	<b>89</b>
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	

<b>10.a.10</b>	<b>American Rescue Plan Act Funding Agreement Bridge House Ready to Work</b>	112
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.11</b>	<b>American Rescue Plan Act Funding Agreement Colorado Coalition for the Homeless</b>	137
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.12</b>	<b>American Rescue Plan Act Funding Agreement Family Tree GOALS</b>	164
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.13</b>	<b>American Rescue Plan Act Funding Agreement Gateway Domestic Violence Services</b>	188
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.14</b>	<b>American Rescue Plan Act Funding Agreement Mile High Behavioral Healthcare, Aurora Day Resource Center</b>	209
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.15</b>	<b>American Rescue Plan Act Funding Agreement Mile High Behavioral Healthcare, Colfax Community Network</b>	231
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	

<b>10.a.16</b>	<b>American Rescue Plan Act Funding Agreement Mile High Behavioral Healthcare, Comitis Crisis Center</b>	253
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.17</b>	<b>American Rescue Plan Act Funding Agreement Restoration Christian Ministries</b>	276
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.18</b>	<b>American Rescue Plan Act Funding Agreement The Salvation Army Chambers Safe Outdoor Space</b>	298
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	
<b>10.a.19</b>	<b>American Rescue Plan Act Funding Agreement The Salvation Army Peoria Safe Outdoor Space</b>	322
	Sponsor: Alison Coombs, Council Member	
	Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney	

**10.b Planning Matters**

**10.c Appointments to Boards and Commissions**

**11. CONSENT CALENDAR - RESOLUTIONS AND ORDINANCES**

*Any member of Council may request an item be removed from Consent Calendar and considered separately. Removed items are considered immediately following the adoption of the Consent Calendar.*

**11.a Resolutions**

- 11.a.1 Fulenwider Sanitary Reimbursement Agreement** 346
- R2023-155** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL’S APPROVAL OF THE SECOND CREEK SANITARY SEWER REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF AURORA ACTING BY AND THROUGH ITS UTILITY ENTERPRISE AND HM METROPOLITAN DISTRICT NO. 1
- Sarah Young, Assistant General Manager of Planning and Engineering, Aurora Water / Ian Best, Assistant City Attorney
- 11.a.2 Amendment to an Intergovernmental Agreement with Metro Water Recovery for Delivery of Reusable Raw Water** 363
- R2023-156** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL’S APPROVAL OF THE FIRST AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE AND THE METRO WASTEWATER RECLAMATION DISTRICT FOR DELIVERY OF REUSABLE RAW WATER
- Alexandra Davis, Assistant General Manager of Water Supply and Demand, Aurora Water / Ian Best, Assistant City Attorney
- 11.a.3 Appointing New Directors to the Murphy Creek Metropolitan District No. 3 Board of Directors** 384
- R2023-157** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO APPOINTING DIRECTORS TO THE BOARD OF DIRECTORS OF MURPHY CREEK METROPOLITAN DISTRICT NO. 3
- Staff is requesting a waiver of reconsideration due to the need of the District to appoint board members prior to the end of the year.
- Sponsor: Steve Sundberg, Council Member
- Jacob Cox, Manager, Office of Development Assistance / Brian Rulla, Assistant City Attorney



- 11.a.4 **An Intergovernmental Agreement (IGA) Between Aurora and Aerotropolis Regional Transportation Authority (ARTA) for the Transfer of Tower Metropolitan District (MD) Mill Levy Funds** 391
- R2023-158** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF AURORA AND AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY (ARTA) REGARDING TRANSFER OF ARI MILL LEVIES (Tower Metropolitan District)
- Jacob Cox, Manager of Development Assistance / Brian Rulla, Assistant City Attorney
- 11.a.5 **National Integrated Ballistic Information Network Memorandum of Understanding (MOU)** 406
- R2023-159** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE AURORA POLICE DEPARTMENT AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES REGARDING THE NATIONAL INTEGRATED BALLISTIC INFORMATION NETWORK
- Sean Mitchell, Police Lieutenant / Megan Platt, Assistant City Attorney
- 11.a.6 **Residential Snow Plow Intergovernmental Agreement (IGA) with Blackstone Metropolitan District for Snow Removal and Plowing Operations on Local Streets** 427
- R2023-160** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND BLACKSTONE METROPOLITAN DISTRICT FOR SNOW REMOVAL AND PLOWING OPERATIONS ON LOCAL STREETS
- Lynne Center, Deputy Director of Operations, Public Works / Michelle Gardner, Senior Assistant City Attorney

- 11.a.7 **Residential Snow Plow Intergovernmental Agreement (IGA) with Southshore Metropolitan District 2 for Snow Removal and Plowing Operations on Local Streets** 452
- R2023-161** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND SOUTHSORE METROPOLITAN DISTRICT NO. 2 FOR SNOW REMOVAL AND PLOWING OPERATIONS ON LOCAL STREETS
- Lynne Center, Deputy Director of Operations, Public Works /  
Michelle Gardner, Senior Assistant City Attorney
- 11.a.8 **An Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for Laredo St. Over High Line Canal Bridge Replacement Project** 477
- R2023-162** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA AND COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR THE LAREDO STREET OVER HIGH LINE CANAL BRIDGE REPLACEMENT PROJECT
- Bret Banwart, Engineering Supervisor, Public Works / Michelle Gardner, Senior Assistant City Attorney
- 11.a.9 **An Intergovernmental Agreement (IGA) Between Aurora and the Aerotropolis Regional Transportation Authority (ARTA) for the I-70 and Picadilly Interchange Funding Contributions** 603
- R2023-163** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF AURORA AND AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY (ARTA) REGARDING COOPERATIVE PROJECT FUNDING (Picadilly Road at Interstate 70)
- Cindy Colip, Public Works Director / Michelle Gardner, Senior Assistant City Attorney

- 11.a.10 **An Intergovernmental Agreement (IGA) with the Office of Alternate Defense Counsel for the Provision of Conflict Attorney Representation** 623

**R2023-164** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND THE STATE OF COLORADO OFFICE OF ALTERNATE DEFENSE COUNSEL REGARDING THE PROVISION OF ATTORNEY REPRESENTATION IN CASES WHERE THE MUNICIPAL COURT APPOINTS AN ATTORNEY OTHER THAN THE MUNICIPAL PUBLIC DEFENDER TO REPRESENT AN INDIGENT PERSON AT ANY STAGE OF THE PROCEEDINGS

Shawn Day, Presiding Judge, Aurora Municipal Court / Angela Garcia, Senior Assistant City Attorney

- 11.a.11 **Rules of Order and Procedure: Amending City Council Rules Regarding Start Times of City Council Meetings and Study Sessions** 668

**R2023-165** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, TO AMEND THE RULES OF ORDER AND PROCEDURE FOR THE AURORA, COLORADO, CITY COUNCIL REGARDING STUDY SESSION AND CITY COUNCIL REGULAR MEETING TIMES

Sponsor: Curtis Gardner, Council Member

Andrea Wood, Assistant City Attorney

11.b **Finalizing of Ordinances**

*Ordinances approved unanimously at first reading*

- 11.b.1 **Update to Aurora Code 50-255 Pertaining to Conditions of Probation** 674

**2023-65** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING SECTION 50-255 OF THE CITY CODE PERTAINING TO THE CONDITIONS OF PROBATION

Shawn Day, Presiding Judge / Angela Garcia, Senior Assistant City Attorney

## 12. PUBLIC HEARINGS

*Public hearings with or without related ordinances*

### 12.a Green Valley Ranch Comprehensive Plan Amendment 680

**2023-66** A PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING THE 2018 COMPREHENSIVE PLAN TO CHANGE THE PLACETYPE FROM CITY CORRIDOR TO EMERGING NEIGHBORHOOD FOR THE AREA LOCATED SOUTH OF 56TH AVENUE, BETWEEN PICADILLY ROAD AND E-470 (GREEN VALLEY RANCH COMPREHENSIVE PLAN AMENDMENT EMERGING NEIGHBORHOOD)

Deborah Bickmire, Senior Planner, Planning and Development Services / Lena McClelland, Assistant City Attorney

### 12.b Green Valley Ranch Zoning Map Amendment – MU-A to R-2 727

**2023-67** A PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR A ZONING MAP AMENDMENT TO REZONE 78.8 ACRES OF LAND TO MEDIUM DENSITY RESIDENTIAL DISTRICT, LOCATED WEST OF TIBET ROAD, BETWEEN E 54TH AVENUE AND E 52ND AVENUE

Deborah Bickmire, Senior Planner, Planning and Development Services / Lena McClelland, Assistant City Attorney

### 12.c Green Valley Ranch Zoning Map Amendment – MU-R to MU-A 770

**2023-68** A PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR A ZONING MAP AMENDMENT TO REZONE 28.3 ACRES OF LAND TO MIXED USE AIRPORT, LOCATED EAST OF TIBET ROAD

Deborah Bickmire, Senior Planner, Planning and Development Services / Lena McClelland, Assistant City Attorney

**12.d Sable Boulevard Townhomes Zoning Map Amendment 809**

**2023-69** A PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR A ZONING MAP AMENDMENT TO REZONE 5.0244 ACRES OF LAND TO MEDIUM DENSITY RESIDENTIAL DISTRICT (R-2), LOCATED AT THE NORTHEAST CORNER OF SABLE BOULEVARD AND EAST MONTVIEW BOULEVARD

Aja Tibbs, Planning Supervisor, Planning and Development Services / Lena McClelland, Assistant City Attorney

**13. INTRODUCTION OF ORDINANCES**

**13.a Lead Service Line Ordinance 838**

**2023-70** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADDING SECTION 138-229 OF THE AURORA CITY CODE PERTAINING TO LEAD AND GALVANIZED SERVICE LINE REPLACEMENT

Earl Wilkinson, Assistant General Manager of Operations, Aurora Water / Ian Best, Assistant City Attorney

**14. FINALIZING OF ORDINANCES**

*Ordinances not approved unanimously at first reading*

**15. ANNEXATIONS**

**16. RECONSIDERATIONS AND CALL UPS**

**17. GENERAL BUSINESS**

**17.a Reappointment of Relief Judges to the Aurora Municipal Court Bench 856**

Shawn Day, Presiding Judge, Aurora Municipal Court

**17.b 2024 City Council Meeting Calendar 859**

Kadee Rodriguez, City Clerk / Andrea Wood, Assistant City Attorney

**17.c Appointment of Members to the Citizens Advisory Budget Committee**

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

**18. REPORTS**

18.a Mayor

18.b Council

19. ADJOURNMENT

**MINUTES**

**Regular Meeting of the Aurora City Council**

Monday, December 4, 2023

1. **RECONVENE REGULAR MEETING OF DECEMBER 4, 2023, AND CALL TO ORDER**

Mayor Coffman reconvened the regular meeting of the City Council for December 4, 2023, at 6:30 p.m.

2. **ROLL CALL**– Kadee Rodriguez, City Clerk

COUNCIL MEMBERS PRESENT: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Lawson, Medina, Murillo, Sundberg, Zvonek

COUNCIL MEMBERS ABSENT: Marcano

*Public call-in instructions were provided in both English and Spanish.*

3. **INVOCATION/MOMENT OF SILENCE**– Mike Coffman, Mayor

Mayor Coffman led the prayer for the December 4, 2023 Council Meeting.

4. **PLEDGE OF ALLEGIANCE** (all standing)

5. **APPROVAL OF MINUTES**

5.a. **November 27, 2023 Meeting Minutes**

CM Coombs asked to make sure the discussion and delay for the Board and Commissions were reflected and stated they had statutorily required Board and Commissions, including the public defender, that they were delaying by making that vote and were required to maintain the independence of that office.

Motion by Coombs, second by Bergan to adopt the amendment by Coombs.

Voting aye: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Lawson, , Medina, Murillo, Sundberg, Zvonek

Motion by Sundberg, second by Bergan, to approve the minutes of the November 27, 2023 with **Coombs' amendment**.

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Lawson, Medina, Murillo, Sundberg, Zvonek

6. **ADJOURNMENT - SINE DIE**

Mayor Coffman adjourned the regular meeting of the City Council.

7. **ANNOUNCEMENT OF ELECTION RESULTS**

- Mayor - Mike Coffman
- Council Member At-Large - Alison Coombs
- Council Member At-Large - Curtis Gardner
- Council Member Ward IV - Stephanie Hancock
- Council Member Ward V - Angela Lawson
- Council Member Ward VI - Francoise Bergan

8. **OATH OF OFFICE**

Presiding Judge, Shawn Day, swore in and presented the election certificates to newly elected and re-elected Council Members.

9. **RECONVENE COUNCIL MEETING**

Mayor Coffman reconvened the regular meeting of the City Council for December 4, 2023.

10. **ROLL CALL** - Kadee Rodriguez, City Clerk

COUNCIL MEMBERS PRESENT: Mayor Coffman, Bergan, Coombs, Gardner, Hancock, Jurinsky, Lawson, Medina, Murillo, Sundberg, Zvonek

COUNCIL MEMBERS ABSENT: None

11. **PROCLAMATIONS OR CEREMONIES**

12. **PUBLIC INVITED TO BE HEARD**

(non-agenda-related issues only)

Council heard public testimony on non-agenda-related items

13. **ADOPTION OF AGENDA**

Motion by Zvonek, second by Sundberg, to adopt the agenda.

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*



Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Hancock, Jurinsky, Lawson, Medina, Murillo, Sundberg, Zvonek

14. **CONSENT CALENDAR – MOTIONS**

*Any member of the Council may request an item to be removed from the Consent Calendar and considered separately. Any item removed will be considered immediately following the adoption of the remainder of the Consent Calendar.*

14.a. **Motions**

**14.a.1 Consideration to AWARD A SINGLE SOURCE CONTRACT to Pikes Peak Harley Davidson, Colorado Springs, CO in the Amount of \$88,319.72 for the Purchase of Four (4) Harley Davidson Motorcycles for Use by Police**

Ron Forrest, Fleet Manager, Public Works / Hanosky Hernandez, Senior Assistant City Attorney

Ron Forrest provided a brief summary of the item.

CM Jurinsky asked if they were contacting any businesses in Aurora to try to keep tax dollars in Aurora.

J. Batchelor said when they issued requests for proposals, businesses responded. He said he could see if they had done any outreach to Aurora dealerships. He noted since they were a government purchasing agency, they were not paying tax dollars. He also explained that they bid out with specifications and took the low bidder that would provide the best value for citizens of Aurora.

CM Jurinsky stated she planned on reaching out to them to see if they knew about the RFP.

CM Bergan asked if they were offering a discount and if it was a requirement of the bid.

R. Forrest stated that was correct and provided additional information.

Motion by Bergan, second by Zvonek, to approve 14.a.1.

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Hancock, Jurinsky, Lawson, Medina, Murillo, Sundberg, Zvonek

**14.a.2 Consideration to AWARD A COMPETITIVELY BID CONTRACT to ENVIRO-VAC INC., Bennett, CO in the Amount of \$108,844.50 for Sand**

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

**Trap Pumping and Cleaning Services as Required by Public Works (B-4706)**

Lynne Center, Deputy Director of Operations, Public Works / Hanosky Hernandez, Senior Assistant City Attorney

**14.a.3 Consideration to AWARD A CHANGE ORDER to B&M Roofing of Colorado, Frederick, CO in the Amount of \$199,613.00 to Add Additional Scope to the AMC Roof Replacement Project; 5903A**

Katrina Rodriguez, Manager of Project Delivery Services, Public Works / Hanosky Hernandez, Senior Assistant City Attorney

**14.a.4 Consideration to Authorize the Senior Risk Manager to Expend Funds for City’s Insurance Program**

A waiver of reconsideration is requested as the insurance policies must be bound by December 29, 2023 as coverage renews on January 1, 2024. Premiums are due within 30 days of renewal, which is the end of January and any delay in approvals could cause the City to have a gap in insurance coverage.

Renee Pettinato Mosley, Senior Risk Manager, Human Resources / Kim Skaggs, Assistant City Attorney

CM Jurinsky asked if city staff checked with Mile High Harley Davidson in Aurora for the award of the police motorcycles. She asked why they continued to not give business to Aurora businesses.

Motion by Jurinsky, second by Bergan, to pull 14.a.1.

Motion by Bergan, second by Lawson to approve the Consent Calendar – Motions with item 14.a.1 removed.

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Hancock, Jurinsky, Lawson, Medina, Murillo, Sundberg, Zvonek

**14.b. Planning Matters**

**14.c. Appointments to Boards and Commissions**

**15. CONSENT CALENDAR - RESOLUTIONS AND ORDINANCES**

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

*Any member of the Council may request an item to be removed from the Consent Calendar and considered separately. Any item removed will be considered immediately following the adoption of the remainder of the Consent Calendar.*

15.a. **Resolutions**

**15.a.1 FY23 Grey and Black Grant Application for Police**

**R2023-154** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE CITY OF AURORA TO APPLY FOR THE 2024-2025 GRAY AND BLACK MARIJUANA GRANT APPLICATION THROUGH THE STATE OF COLORADO

Timothy Sherbondy, Grant Analyst, Police / Megan Platt, Assistant City Attorney

15.b. **Finalizing of Ordinances**

Motion by Gardner, second by Medina to approve the Consent Calendar – Resolutions and Ordinances.

Voting Aye: Bergan, Coombs, Gardner, Hancock, Jurinsky, Lawson, Medina, Murillo, Sundberg, Zvonek

Abstain: Mayor Coffman

16. **PUBLIC HEARINGS**

17. **INTRODUCTION OF ORDINANCES**

17.a **Update to Aurora Code 50-255 Pertaining to Conditions of Probation**

**2023-65** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING SECTION 50-255 OF THE CITY CODE PERTAINING TO THE CONDITIONS OF PROBATION

Shawn Day, Presiding Judge / Angela Garcia, Senior Assistant City Attorney

Shawn Day, Presiding Judge, gave a brief presentation on the item.

Motion by Zvonek, second by Sundberg to approve 17.a.

Voting Aye: Bergan, Coombs, Gardner, Hancock, Jurinsky, Lawson, Medina, Murillo,

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

Sundberg, Zvonek

Abstain: Mayor Coffman

18. **FINALIZING OF ORDINANCES**

19. **ANNEXATIONS**

20. **RECONSIDERATION AND CALL UPS**

21. **GENERAL BUSINESS**

21.a. **Consideration to Elect the Mayor Pro Tem**

Kadee Rodriguez, City Clerk/George Koumantakis Manager of Client Services, City Attorney

Motion by Murillo, second by Medina, to appoint Council Member Coombs as Mayor Pro Tem.

CM Coombs stated she was honored to serve on the Council the last four years to build strong relationships with city employees, stakeholders, and members and worked to address issues from a thoughtful and factual perspective. CM Coombs stated there was a lot they could do to improve the functioning of the body and asked for colleague support to be Mayor Pro Tem.

CM Murillo voiced her support for CM Coombs as Mayor Pro Tem. She stated CM Coombs was entering a second term and was moved to an At-Large seat, which spoke for the ability to serve in a Mayor Pro Tem role. She stated she was very analytical and data driven when it came to pursuing different policies. She said she had seen CM Coombs legislate in a way that anchored values and rooted in the data and direct impact to the community and they needed that on city council. CM Murillo said CM Coombs had built deep relationships with staff and won the At-Large seat with the most votes **in the city's history**.

Voting Aye: Coombs, Medina, Murillo

Voting Nay: Mayor Coffman, Bergan, Gardner, Hancock, Jurinsky, Lawson, Sundberg, Zvonek

Motion by Jurinsky, second by Sundberg to appoint Council Member Zvonek as Mayor Pro Tem.

◆ ***The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.***

CM Bergan gave support for CM Zvonek being Mayor Pro Tem. She stated he had shown, by his actions, to be a really productive Mayor Pro Tem in working with council to achieve the goals of the city.

Voting Aye: Mayor Coffman, Bergan, Gardner, Hancock, Jurinsky, Lawson, Sundberg, Zvonek

Voting Nay: Coombs, Medina, Murillo

22. **REPORTS**

22.a. **Report by the Mayor**

Mayor Coffman did not have a report.

22.b. **Reports by the Council**

CM Jurinsky stated the people of the Aurora had a right to know what was going on in the city. She explained she had an employee that had been living in an extended stay hotel for over a year, along with many other families, and Denver Mayor Mike Johnson, without the approval of city council, rented out Aurora hotels and bussed migrants into Aurora and filled up the hotels, which put the people staying there on the street. CM Jurinsky stated she wanted the people of Aurora to know it was the Quality Inn on Mississippi and Abeline and the Denver Mayor was kicking out Aurora residents and American citizens onto the streets.

CM Zvonek thanked his colleagues for the opportunity to serve as Mayor Pro Tem and thanked outgoing Mayor Pro Tem Gardner and former Mayor Pro Tem Bergan for their service, stating he learned a lot from them and hoped to serve the body well going forward.

CM Murillo congratulated the new Mayor Pro Tem. She stated she was still waiting on her call after he said he would be reaching out to all council members. She said she looked forward to working with him and thanked Mayor Pro Tem Gardner for his work. She stated she had no town hall in December. CM Murillo congratulated CM Hancock and expressed looking forward to working with her.

CM Sundberg stated he was contacted by a hotel owner from the same street CM Jurinsky mentioned. He said a former veteran was having a serious mental episode doing a suicide by cop that escalated and was a threat to himself and others. He stated CRT was on the phone with him being patient and was an example on how their police force and fire communicated very well. He said the man eventually surrendered but showed their veteran police force acting professional and doing a good job. He said he and CM Hancock attended the Southeast Area Maintenance Facility for a discussion on engineered drought

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resistant Bermuda grass and that was promising. He stated he attended police and fire graduations and said he hoped to rebuild their police force. CM Sundberg congratulated CM Zvonek and looked forward to his leadership.

CM Hancock stated the SEAM Plant was an exciting experience and was amazing to see the amount of work and education the water department was doing. She said the main takeaway was it was important for residents to understand how water worked and how they could be good stewards of their resources. She said education and communication were important and was looking forward to get work done.

CM Bergan congratulated CM Zvonek and said she looked forward to working with him. She said they were having Shop with a Cop on Saturday morning at the Southlands Walmart.

CM Coombs congratulated CM Hancock and CM Zvonek and thanked CM Marcano for his service and said he would be sorely missed. CM Coombs said working alongside him made her a better council member, taught her a lot about many subjects, and helped everyone understand issues better.

Council members Lawson, Gardner and Medina did not have reports.

23. **ADJOURNMENT**

Mayor Coffman adjourned the regular meeting of the City Council.

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MIKE COFFMAN, MAYOR

ATTEST:

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KADEE RODRIGUEZ, CITY CLERK

- ◆ ***The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.***



# CITY OF AURORA

## Council Agenda Commentary

**Item Title:** Consideration to AWARD A CHANGE ORDER TO AN OPENLY SOLICITED CONTRACT to Carollo Engineers, Inc., Broomfield, CO in the Amount of \$214,841.00 for the Wemlinger Water Purification Facility (WPF) Electrical and Communications Improvements Project

**Item Initiator:** Kelsey Baertschi, Project Manager, Aurora Water

**Staff Source/Legal Source:** Swirvine Nyirenda, Project Delivery Services Manager, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney

**Outside Speaker:** N/A

**Council Goal:** 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Swirvine Nyirenda, Project Delivery Services Manager, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

The award of an OPENLY SOLICITED CONTRACT in the amount of \$549,658.00 to Carollo Engineers, Inc., Littleton, CO, for Engineering Services for the Wemlinger Water Purification Facility Electrical and Communication Improvements Project, Project No. R-2111 was reported on the Weekly Report To Council dated January 30, 2023.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

**Background**

The Wemlinger Water Purification Facility (WPF) Electrical and Communications Improvements Design Project was awarded to Carollo Engineers, Inc. (Carollo) in February 2023, which was solicited under a formal competitive Request for Proposal (RFP) using a qualifications-based selection process. The original project scope included conducting a condition assessment of the entire electrical system at the facility and preparing a design that includes replacement of aging electrical equipment including motor control centers (MCCs) and associated components (motor starters, circuit monitors, panelboards, circuit breakers, transfer switches, soft starts, power monitors, tie breakers, and distribution transformers). The project scope also includes upgrading the radio and cellular communications systems around the facility to provide full coverage around the entire facility and to meet current codes and standards.

The MCCs are over 20 years old, have reached the end of their useful life, and contain components that are no longer supported by electrical suppliers. Due to the age of the MCCs, there is a lack of replacement parts available making it challenging to conduct repairs, putting the operation of the plant at risk in the event of major failures.

During initial discussions with the pumping and treatment operations groups at the start of the project, it was communicated to the design team that operations intend to eventually convert the Zone 4/5 pump station medium voltage (4,160 volt) motors to low voltage (480 volt) motors equipped with variable frequency drives (VFDs) to reduce energy consumption, utilize electric utility rebates, and improve the control capability. The addition of VFDs to the Zone 4/5 pump station impacts design decisions for the Project and therefore, it is necessary to incorporate the design of the VFDs into the project to have a properly designed electrical system. As a result, Aurora Water **staff recommend combining the VFD design with the existing Project's electrical improvements design to streamline the projects** so that all the necessary electrical improvements are completed in a coordinated and efficient manner.

In addition, the recent Integrated Water Master Plan No. 2 identified the need for additional pumping capacity (up to 10 million gallons per day) at the Wemlinger Zone 5 pump station in order to provide adequate system capacity in the event of an outage at the Binney Water Purification Facility. It is critically important that the electrical system design accounts for the increased pump motor sizes required to provide the additional pumping capacity. Therefore, Aurora Water recommends that the necessary additional hydraulic evaluation and electrical design be incorporated into the Project at this time.

The success of the Project depends on preparing a detailed design that incorporates the addition of VFDs into the Zone 4/5 pump station and any future pumping capacity increases at the pump station, as these changes will result in a significant impact on the upstream and downstream electrical distribution.

Due to Carollo's work on the existing system and MCC replacement design, Aurora Water is recommending the additional scope be included in the existing contract to realize knowledge and design efficiencies.

**Item Scope**

The incorporation of the VFD design and Zone 4/5 pump station pumping capacity evaluation will result in the following additions to the scope of work for the Project:

- Design for additional electrical, structural, instrumentation, and heating, ventilation, and air conditioning (HVAC) design for the new VFDs. The room(s) housing the new VFDs will require additional cooling.
- Additional electrical design for supplying and transforming power to the new VFDs.



- Civil site work design for new duct banks required due to the increased size and number of conductors necessary to feed the new equipment.
- Additional structural design for installing new VFDs and new electrical conduits.
- Process mechanical design for coordinating the replacement of the existing Zone 5 pump station motors with inverter duty-rated motors.
- Evaluation of hydraulic capacity and pump sizing for new Zone 4/5 pumps in the existing pump station.

Specific cost, schedule, and scope details associated with the proposed amended work are provided as an Attachment Two to this commentary. The proposed Amendment Number One of \$214,841.00 plus the original award amount of \$549,830.00 will bring the contract's not-to-exceed amount to \$764,671.00. The hourly fees are in alignment with Carollo's MESA VII rates and are considered fair and reasonable.

One additional amendment is anticipated for Carollo to provide engineering services during construction for the electrical improvements. The anticipated timeframe for construction of the Project is 2025/2026. This future amendment request will be brought forth to City Council for approval at that time.

**Recommendation**

Based on the above, staff recommends the award of a change order to an OPENLY SOLICITED CONTRACT to Carollo Engineers, Inc., Broomfield, CO in the amount of \$214,841.00 for the Wemlinger Water Purification Facility (WPF) Electrical and Communications Improvements Project – Project No. 2111.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact     
  Budgeted Expenditure Impact     
  Non-Budgeted Expenditure Impact  
 Workload Impact     
  No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

Funding for this change order will be from the Capital Improvement Program Water Fund in the amount of \$214,841.00. The funding will be from ORG: 52486 ACCT: 68410.

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does City Council approve the award a change order to an OPENLY SOLICITED CONTRACT to Carollo Engineers, Inc., Broomfield, CO in the amount of \$214,841.00 for the Wemlinger Water Purification Facility (WPF) Electrical and Communications Improvements Project – Project No. 2111?

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**LEGAL COMMENTS**

Any change order or amendment that would cause the **cumulative** total of all change orders to a contract to exceed \$100,000 requires City Council approval. See, Sec. 2-676(II)(b)(3) A.C.C. (Hernandez)

**AWARDS \$50,000.00 - \$2,000,000.00 subject to call-up and not based on lowest dollar basis (usually awards where qualifications rather than price dominate the process):**

COMPANY	DESCRIPTION OF AWARD	AWARD AMOUNT	BID / RESULTS
<p><b>CAROLLO ENGINEERS, INC.</b></p> <p><b>LITTLETON, CO</b></p> <p><b>DEPT: WATER</b></p>	<p>Award an openly solicited contract to Carollo Engineers, Inc. for Engineering Services for the Wemlinger Water Purification Facility Electrical and Communication Improvements Project. The engineering services were solicited under a formal competitive Request for Proposal (RFP) using a qualifications-based selection process where the top-ranked firm is selected for contract award. Due to the nature of the services, pricing is not a factor in the selection of the top-ranked firm. Price is negotiated with the top-ranked firm only.</p> <p>Carollo was selected as the top-ranked firm out of the five (5) firms that responded. All of the firms were evaluated based on the following criteria contained in the RFP:</p> <ol style="list-style-type: none"> <li>1. Specialized experience and technical competence.</li> <li>2. Project approach.</li> <li>3. Overall impression of proposal.</li> </ol> <p>As a result, a detailed scope of work, project schedule and price proposal in the not-to-exceed amount of \$549,658.00 were negotiated with Carollo Engineers, Inc. The proposed hourly labor rates are the same as their MESA VII agreement. Based on the above, the price proposal for providing the proposed services is considered to be fair and reasonable.</p> <p><i>This award is the result of an open solicitation where the City received at least 3 offers, and the price was negotiated with the top ranked firm on the basis of qualifications. 2-672-(a), (3), (a) (2)</i></p>	<p><b>\$549,658.00</b></p>	<p><b>R-2111</b></p> <p>Advanced Engineering and Environmental Services, LLC (AE2S)</p> <p><b>Carollo Engineers, Inc.</b></p> <p>HDR Engineering, Inc.</p> <p>Plummer Associates, Inc.</p>

CITY of Aurora/Aurora Water (CITY)  
Carollo Engineers, Inc. (CONSULTANT)  
Wemlinger WPF Zone 4 & 5 Pumping Station Electrical Improvements  
Amendment to Wemlinger WPF Electrical and Communications Improvements Project  
(PO#23P0123)  
CONSULTANT's Scope of Work  
October 2023

## **SCOPE OF WORK**

### **Introduction:**

The CONSULTANT will provide engineering services for the Zone 4 & 5 Pumping Station Improvements project at the Wemlinger Water Purification Facility (WPF). This project will be contracted as an amendment to the ongoing Wemlinger WPF Electrical and Communication Improvements Project. The scope for the Project amendment has been broken out into the following tasks:

### **Task 1300 – Basis of Design**

#### **1300.01 Facility Verification and Familiarization**

The CONSULTANT shall conduct one site investigation, lasting up to 4 hours, with up to two representatives from the CONSULTANT to collect information on the existing electrical and control system to confirm the accuracy of the record drawings. CONSULTANT will coordinate the investigation date with the appropriate CITY representative. During the site investigation, CITY representatives will provide access to the facilities and equipment in question. CONSULTANT will conduct data collection in coordination with CITY staff based on site investigation efforts.

During the field investigation the CONSULTANT will begin conversations with staff to understand the condition, operations, and known issues with the existing system.

The site investigation will focus on the key project components including location and layout of new switchgear and VFDs, duct bank and conduit routing, location and layout of new HVAC, siting for new transformers.

#### **Assumptions:**

- CITY will provide representatives who can provide information concerning the following existing conditions of the WPF:
  - Known instrumentation, control, mechanical, electrical, and operational issues.
- CITY will provide the most recent Record Drawings and supporting documents for the WPF.
- CITY to provide Tech Ops and Operations representative.

- Facility verification will be limited to equipment and areas physically accessible and readily visual on the day of each site visit.

### **1300.02 Basis of Design Report**

The CONSULTANT will incorporate the 30% Wemlinger WPF Zone 4 & 5 Pumping Station Electrical Improvements design into the Wemlinger Electrical Improvements Basis of Design Report. The Basis of Design Report will include a comprehensive evaluation of all existing zone 4 & 5 Pump Station equipment. Two design alternatives will be developed to a 30% level along with a fee estimate.

Assumptions:

- Two alternative projects will be considered for 30% design and cost estimate.

Deliverables:

- Basis of Design Report

### **1300.03 Wemlinger Zone 4 & 5 Pump Station Capacity Evaluation**

The CONSULTANT will evaluate system curves for different Zone 4 and Zone 5 pumping scenarios including existing conditions, anticipated future conditions, and an emergency pumping scenario of pumping up to an additional 10 mgd to Zone 5 in the event of a Binney WPF outage.

The CONSULTANT will evaluate replacement pumps from different manufacturers to find options that best fit the current and future flow scenarios.

The CONSULTANT will provide pumping operating envelopes of proposed pumps, overlaid on the system curves, to allow the CITY to decide which options are preferred.

The CONSULTANT will provide a recommended pump replacement and associated motor hp sizing for use in the current electrical improvements project.

Assumptions:

- Approximately 20 system curves will be provided to CONSULTANT by the CITY or the CITY's consultant in charge of their water distribution system model.
- The CONSULTANT will evaluate replacement pumps that will fit within the existing pump cans and discharge piping.

### **1300.04 Wemlinger Zone 4 & 5 Pump Station Capacity Evaluation Workshop**

The CONSULTANT will conduct the following Workshops at the CITY's facility:

- Wemlinger Zone 4 & 5 Pumping Station Capacity Evaluation Workshop:
  - Attendance: Up to three representatives from the CONSULTANT.
  - Length: Two hours
  - Purpose: Discuss the Wemlinger Zone 4 & 5 Pump Station capacity evaluation and recommended improvements

Deliverables:

- Workshop Agenda and Meeting Minutes

### **1300.05 Wemlinger Zone 4 & 5 Pump Station Capacity Evaluation Technical Memorandum**

The CONSULTANT will provide a Technical Memorandum summarizing the evaluation and recommendations for pump station improvements.

Deliverables:

- Technical Memorandum summarizing the findings.

### **Task 1400 – 60% Design – Zone 4 & 5 Pumping**

#### **1400.01 60% Design Submittal**

The CONSULTANT will incorporate the Wemlinger WPF Zone 4 & 5 Pumping Station Electrical Improvements 60% design into the Wemlinger Electrical Improvements 60% deliverable for the CITY's review. The 60% design deliverable will include:

- Drawings
- Preliminary Specifications

Assumptions:

- The drawings and specifications will be delivered as part of the 60% Wemlinger WPF Electrical and Communication Improvements submittal.

Deliverables:

- Electronic set of 60% Design Documents
- 60% Engineering Construction Cost Estimate
- 60% Construction Schedule
- 60% Design Review Meeting Agenda and Minutes

### **Task 1500 – 95% Design Development – Zone 4 & 5 Pumping**

#### **1500.01 95% Design Deliverable**

The CONSULTANT will incorporate the Wemlinger WPF Zone 4 & 5 Pumping Station Electrical Improvements 95% design into the Wemlinger Electrical Improvements 95% deliverable for the CITY's review. The 95% design deliverable will include:

- Drawings

- Specifications

Assumptions:

- The drawings and specifications will be delivered as part of the 95% Wemlinger WPF Electrical and Communication Improvements submittal.

Deliverables:

- Electronic set of 95% Design Documents
- 95% Engineering Construction Cost Estimate
- 95% Construction Schedule
- 95% Design Review Meeting Minutes

## **Task 1600 – Bid Document Development – Zone 4 & 5 Pumping**

### **1600.01 Bid Document Deliverable**

- The CONSULTANT will incorporate the Wemlinger WPF Zone 4 & 5 Pumping Station Electrical Improvements Bid Documents into the Wemlinger Electrical Improvements Bid Document deliverable for the CITY's review. The Bid Documents deliverable will include:
  - Drawings
  - Specifications
  - Asset management documentation

Assumptions:

- The drawings and specifications will be delivered as part of the Bid Document Wemlinger WPF Electrical and Communication Improvements submittal.

Deliverables:

- Electronic set of Bid Documents

## **Task 1700 – Bid Phase Services – Zone 4 & 5 Pumping**

### **1700.01 Bid Phase Services**

The CONSULTANT will respond to bidder questions. Responses will be conveyed via CITY issued addendum.

Deliverables:

- Written responses to submitted bidder questions in the form of email to the CITY.

### **Additional Items Not Included:**

- Printing or reproduction
- Work effort for other items not specifically listed in this proposal.

## COMPENSATION

Total compensation for the scope of work stated above totals \$214,841. The fee presented herein is valid for 90 days from issue. A breakdown of the fee is presented in the following table:

**Table 1 - CONSULTANT's Schedule of Cost**

		CAROLLO LABOR HOURS							TOTAL LABOR HOURS CAROLLO	TOTAL FEE
		Senior Professional	Lead Project Professional	Project Professional	Professional	Senior Technician	Technician	Document Processing/ Clerical		
		\$273.00	\$239.00	\$207.00	\$184.00	\$179.00	\$129.00	\$113.00		
<b>1300</b>	<b>Basis of Design</b>	<b>9</b>	<b>35</b>	<b>79</b>	<b>50</b>	<b>12</b>	<b>45</b>	<b>10</b>	<b>240</b>	<b>\$ 98,282</b>
1300.01	Facility Verification and Familiarization	4	10	4	0	4	0	0	22	\$ 5,026
1300.02	Basis of Design Report	5	25	75	50	8	45	10	218	\$ 40,432
1300.03	Wemlinger Zone 4&5 Pump Station Capacity Evaluation	8	0	35	30	0	0	0	73	\$ 14,949
1300.04	Wemlinger Zone 4&5 Pump Station Capacity Evaluation Workshop	10	10	10	0	0	0	0	27	\$ 7,190
1300.05	Wemlinger Zone 4&5 Pump Station Capacity Evaluation Technical Memorandum	0	100	15	20	0	0	0	135	\$ 30,685
<b>1400</b>	<b>60% Design - Zone 4&amp;5 Pumping</b>	<b>15</b>	<b>40</b>	<b>55</b>	<b>75</b>	<b>20</b>	<b>70</b>	<b>0</b>	<b>275</b>	<b>\$ 51,450</b>
1400.01	60% Design Submittal	15	40	55	75	20	70	0	275	\$ 51,450
<b>1500</b>	<b>95% Design- Zone 4&amp;5 Pumping</b>	<b>10</b>	<b>45</b>	<b>70</b>	<b>90</b>	<b>25</b>	<b>90</b>	<b>8</b>	<b>338</b>	<b>\$ 61,528</b>
1500.01	95% Design Submittal	10	45	70	90	25	90	8	338	\$ 61,528
<b>1600</b>	<b>Bid Document Development - Zone 4&amp;5 Pumping</b>	<b>10</b>	<b>20</b>	<b>35</b>	<b>45</b>	<b>25</b>	<b>50</b>	<b>3</b>	<b>188</b>	<b>\$ 34,263</b>
1600.01	Bid Document Deliverable	10	20	35	45	25	50	3	188	\$ 34,263
<b>1700</b>	<b>Bid Phase Services - Zone 4&amp;5 Pumping</b>	<b>2</b>	<b>5</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>17</b>	<b>\$ 3,581</b>
1700.01	Bid Services	2	5	0	10	0	0	0	17	\$ 3,581
<b>Totals - All Tasks</b>		<b>36</b>	<b>125</b>	<b>204</b>	<b>225</b>	<b>57</b>	<b>205</b>	<b>18</b>	<b>870</b>	<b>\$214,841</b>

## DESIGN SCHEDULE

The work associated with the Wemlinger Zone 4 & 5 Pump Station Capacity Evaluation (Tasks 1300.03, 1300.04, 1300.05) will proceed the Wemlinger Electrical and Communication Improvements Project schedule. All other tasks listed will follow the Wemlinger Electrical and Communication Improvements Project schedule.





# CITY OF AURORA

## Council Agenda Commentary

**Item Title:** Consideration to AWARD A CHANGE ORDER TO AN OPENLY SOLICITED CONTRACT with Dewberry Engineers, Inc., Denver, Colorado in the amount of \$185,272.00 to provide Services During Construction for the Piney Creek Lift Station Power Improvements project.

**Item Initiator:** Clinton Weisz, Project Engineer, Aurora Water

**Staff Source/Legal Source:** Andrea Long, Principal Engineer, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney

**Outside Speaker:** N/A

**Council Goal:** 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Andrea Long, Principal Engineer, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval
- Forwarded Without Recommendation  Minutes Not Available
- Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

The OPENLY SOLICITED Master Engineering Services Agreements (MESA-VII) was awarded to fifty-six (56) firms in various amounts as noted in the Commentary, for providing task order engineering services over a three-year period, RFP NO. 2064, was approved by City Council on February 22, 2022, Agenda Item 9c. Task Order Number Two was awarded to Dewberry Engineers, Inc., Denver, Colorado, for the Piney Creek Lift Station Power Improvements Project in the not-to-exceed amount of \$103,282.00 under the MESA VII program approved by Council as noted.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

**Background**

The automatic transfer switch (ATS) at the Piney Creek Lift Station (PCLS) experienced a failure 2022 that revealed underlying issues with the current electrical layout in the facility. These issues include being unable to isolate the lift station power without Xcel's assistance, being unable to isolate and easily remove either the normal or emergency power breakers for maintenance, and high arc flash ratings on the ATS making it unsafe to service. The sanitary sewer lift station is a critical asset in the City's system that can reach overflow levels in as little as five minutes under peak flows. In the event the lift station is inoperable, sewage will spill into Piney Creek which is a Water of the State and eventually discharges to Cherry Creek Reservoir. Aurora staff has installed a temporary fix that allows the emergency generator to run a single pump and has returned the lift station to its former operating conditions. This project will replace the temporary fix with a permanent solution.

Dewberry was selected because of their familiarity with the lift station and the problem at hand. They had the ability to react quickly and develop a final solution. Dewberry's extensive knowledge of the site and their ability to expedite the schedule saved the City of Aurora monies during the design phase.

**Scope**

This project designed improvements to improve redundancy, operational efficiency and safety for City employees. The project will include Conduit & Wire, ATS, cabinets, controllers, power monitors, PLC integration, door intrusion switches, motion monitors, and other miscellaneous electrical and civil site improvements necessary to complete the project. This change order adds engineering services that will be needed during construction including attend meetings, review of shop drawings, submittals, record drawings and requests for information, specialty inspections. This change order also adds budget for electrical system analysis.

Specific cost, schedule, and scope details associated with the proposed amended work are provided as an Attachment Two to this commentary. The original contract amount of \$103,282.00 plus this Change Order Number Three in the amount of \$185,272.00 brings the total contract amount to \$288,554.00. (Change Order Numbers One and Two were a term extensions only) The hourly fees are in alignment with Dewberry's MESA VII rates and are considered fair and reasonable.

**Recommendation**

Based on the above, City staff recommend the award of a CHANGE ORDER TO AN OPENLY SOLICITED CONTRACT in the amount of \$185,272.00 to Dewberry Engineers INC, Denver, Colorado for the Piney Creek Lift Station Power Improvements project.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact
- Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

Funding for this change order will come from the Capital Improvement Program, Wastewater Fund budget in the amount of \$185,272.00.  
  
Org: 52391, Account: 68310

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

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**QUESTIONS FOR COUNCIL**

Does City Council approve the award of a CHANGE ORDER TO AN OPENLY SOLICITED CONTRACT in the amount of \$185,272 to Dewberry Engineers INC, Denver, Colorado for the Piney Creek Lift Station Power Improvements project?

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**LEGAL COMMENTS**

Any change order or amendment that would cause the **cumulative** total of all change orders to a contract to exceed \$100,000 requires City Council approval. See, Sec. 2-676(II)(b)(3) A.C.C. (Hernandez)

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Council Member Berzins asked if Council could vote online in addition to the verbal vote. Ms. Rodriguez answered affirmatively, noting it would be a helpful test of the online voting system.

9. **CONSENT CALENDAR**

*This portion of the agenda is a meeting management tool to allow the City Council to handle several routine items with one action. Any member of the Council may request an item to be removed from the Consent Calendar and considered separately. Any item removed will be considered immediately following the adoption of the remainder of the Consent Calendar.*

- 9.a. Consideration to AMEND AN OPENLY SOLICITED CONTRACT with Black and Veatch Corp., Denver, Colorado in the amount of \$530,893.00 to provide final design phase services and services during construction for the Murphy Creek Interconnection and Delivery Vault

Dean Bedford, Principal Engineer, Aurora Water / Dave Lathers, Senior Assistant City Attorney

- 9.b. Consideration to APPROVE AN AGREEMENT between the city of Aurora, Colorado and the International Association of Firefighters Local 1290 for the years 2021-2022

Jacob Bergeron, Labor Relations Officer / Jason Batchelor, Deputy City Manager

- 9.c. Consideration to AWARD OPENLY SOLICITED CONTRACTS for Master Engineering Services Agreements (MESA VII) to fifty-six (56) firms in various amount as noted in this Commentary, for providing task order engineering services over a three-year period, RFP 2064

Sarah Young, Deputy Director of Planning and Engineering, Aurora Water / Dave Lathers, Senior Assistant City Attorney

Motion by Berzins, second by Coombs, to approve items 9a – 9c.

Voting Aye: Mayor Coffman, Bergan, Berzins, Coombs, Gardner, Gruber, Hiltz, Johnston, Lawson, Marcano, Murillo

- 9.d. Consideration to AMEND AN OPENLY SOLICITED CONTRACT to Tetra Tech, Inc., Denver, Colorado in the amount of \$5,739,763.00 for providing professional Engineering Services for the Feasibility Design, and Permitting Support for Wild Horse Dam and Reservoir, R

John P. Clark, Principal Engineer, Aurora Water / Dave Lathers, Senior Assistant City Attorney

Motion by Coombs, second by Marcano, to approve item 9d.

Council Member Coombs requested a brief presentation by staff for the benefit of the public.

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

**CITY OF AURORA – AURORA WATER  
PINEY CREEK LIFT STATION POWER IMPROVEMENTS  
AMENDMENT 3 ENGINEERING SERVICES DURING CONSTRUCTION**

**PROJECT UNDERSTANDING**

**BACKGROUND**

Amendment 3 is proposed to increase the contract value to add construction services to the contract. The additional construction phase services are described below. No additional time is added as part of Amendment 3, the contract time was previously amended.

**SCOPE OF WORK**

The tasks included in our scope of work are described in detail below. Planned services comprise and are limited to those specifically set forth under this proposal. Additional services may be added by written contract amendment.

**TASK 1 – PROJECT MANAGEMENT, QUALITY ASSURANCE AND QUALITY CONTROL**

This task will include time to perform the following:

- Manage project staff, monitor work schedule and budgets, provide general contract administration, and prepare monthly invoices.
- Provide coordination and communication with team members.
- Provide quality assurance and quality control (QA/QC) services on project work products.

**TASK 8 – CONSTRUCTION SERVICES**

**8.1 Preconstruction Conference.** Attend the project Preconstruction Conference. This scope of work assumes three personnel from Dewberry for a three hour preconstruction conference meeting.

**Task 8.2 Office Engineering Services.** Provide the following services:

**Task 8.2.1 – Shop Drawing/Submittal Review.** Review all shop drawings and submittals for the Piney Creek Lift Station Repair project. Based upon the design items, we assume approximately 25 to 30 submittals of which 10 will need to be reviewed by multiple disciplines. Submittals are anticipated to include shop drawings, diagrams, illustrations, catalog data, samples, schedules, the results of inspections, O&M manuals and maintenance summaries, and other data that the Contractor is required to submit. Submittals and shop drawings will be reviewed for general conformance with project design and for general compliance with the requirements of the construction documents. Submittal/shop drawing review will be coordinated with the City of Aurora through the project construction management software system (EADoc Construction Project Management software). Dewberry's level of effort for submittal review assumes a

maximum of two submissions by the Contractor for each shop drawing, sample, or submission with an average review time of five hours.

**Task 8.2.2 – Review Requests for Information (RFI’s).** At the request of the City of Aurora, Dewberry will provide a technical review and response to Contractor requests for information or clarification of the construction documents. Dewberry will coordinate such review with the City. Budget for this task is based on assisting with up to twenty five RFI’s. Dewberry anticipates that each interpretation and clarification will require an average of four hours to research, respond, and document.

**Task 8.2.3 – Change Order Review.** Review Change Orders or Work Directives. Engineer anticipates a total of five PCO/Work Directives. Engineer anticipates that each PCO/Work Directive will require up to fourteen hours to research, prepare engineering, estimate costs, respond, document, and administer.

**Task 8.2.4 – Asset Ingestion Form.** Complete the asset ingestion form for all new equipment and valves installed as part of this project.

**Task 8.3 Construction Progress Meetings.** Dewberry will attend weekly construction progress meetings with representatives of the City of Aurora, the Contractor, and other personnel as required to discuss progress of construction and construction issues. Budget for this task is based on attending biweekly progress meetings on average for approximately seventeen months. Within this time frame, a total of ~~forty one~~ <sup>twenty three</sup> meetings are assumed. Each project progress meeting is anticipated to last one hour and require approximately one hour of time for pre and post meeting preparation and administration. Each project progress meeting shall be attended by the Project Manager and other members of the design team as needed.

**Task 8.4 – Periodic Site Visits during Construction.** Provide specialty inspections during construction. Conduct on-site observations and inspections of specific pieces of the Contractor's work to determine if the work generally conforms to the design intent of the construction contract and with approved project submittals, and to address specific construction issues. Specialty inspections are expected to include rebar and electrical inspections. Advise the City of Aurora of work found not to be in accordance with the construction documents and coordinate on corrective actions. Budget for this task is based on fourteen four hour site visits. This task does not include normal daily work inspections. Daily inspections will be conducted by the City’s staff.

**Task 8.5 – Substantial and Final Completion.** Dewberry will assist with substantial and final completion walk-throughs and review and provide input for substantial completion and final completion ‘punch-list’ items. Budget for this task assumes that the substantial completion and final completion walk-throughs will require one six hour day for each.

**Task 8.6 - Record Drawing Preparation.** Dewberry will transfer as-built data to permanent record drawings using Contractor’s red-lines, survey data, and GIS data as well as Aurora Water information (red-lines, notes, survey data, GIS data, etc.) of construction changes and final configuration of constructed facilities.

Dewberry will rely on the accuracy and completeness of record drawing information developed by others. Dewberry will not be responsible for missing or incomplete information. If Dewberry identifies missing or incomplete information, Dewberry will notify Aurora Water.

## **TASK 9 – ELECTRICAL SYSTEM ANALYSIS**

**Task 9.1 – Electrical System Analysis.** Dewberry will complete an Electrical Systems Analysis that includes a Short Circuit study, Protective Device Coordination, and Arc Flash Hazard Analysis in accordance with City of Aurora DEG Rev0 Section 6.5. The studies will be completed using the ETAP 22.5 software.

Dewberry Scope of Work:

- System information provided to Dewberry from drawings & equipment submittals (Task 9.1). All equipment will be onsite verified once installed including (Task 9.2):
  - 480V distribution network
  - Utilization equipment including transformers, switchgear, panelboards, motor control centers, VFD's, transfer switches, & generators.
  - Protective devices including relays, fuses, and circuit breakers.
- Utility data coordination for fault contributions.
- Develop a new ETAP model using information as outlined above.
- Perform short circuit study (Task 9.3).
- Develop protective device settings (Task 9.4).
- Perform coordination study, based on developed settings (Task 9.4).
- Perform arc flash study (Task 9.5).
- Final comprehensive report (Task 9.6).
- Install arc flash labels and implement protective device settings (Task 9.7).

Work by Others:

- Provide all electrical equipment information.

Comments, Clarifications, & Exclusions:

- Protective device setting development for protective devices only accounts for settings and implementation. Any additional protective device programming, programming of the transfer controller, or power meters is not included.
- The study will be carried out according to the guidelines of IEEE Standard 1584-2018.
- The study will only consider three phase faults.
- The study will consider the following scenarios and analysis will reflect the worst-case:
  - Scenario 1 – Utility serving the system.
  - Scenario 2 – Standby generators serving the system.
- The scope includes one report review cycle with Owner to address any feedback.

## **TASK 10 – SUPPLEMENTARY SERVICES DURING CONSTRUCTION**

**Task 10.1 – Supplementary Services during Construction.** An amount equal to \$10,000.00 was included in the scope to provide for additional unknown, unscoped work. This may include work

not defined in the original or amended project scope but identified as the project progresses. Budget from this Task will not be utilized without written approval from Aurora Water.

## **DELIVERABLES**

Dewberry will prepare the following deliverables:

1. Monthly invoices and project reports.
2. Submittal/Shop drawing review comments.
3. Drawings, research, or other information (in PDF format) prepared for Tasks 8.2.2 and 8.2.3.
4. Asset Ingestion Form.
5. Electrical System Analysis models, reports, and arc flash labels.
6. Record Drawings - one (1) set of half-size hardcopy and a complete set of electronic files (AutoCAD and PDF files).

## **SERVICES NOT INCLUDED**

- Construction Management/Inspection services as provided by the City of Aurora.
- City of Aurora's CWI and soils and materials testing consultant will prepare and submit all weld inspection, soils testing, and materials testing reports.

## **PROJECT DELIVERABLES**

**Electronic Files.** Spatial data files will be compatible with GIS standards for retrieval purposes. Drawing files shall be completed in AutoCAD 2018 with electronic copies provided in AutoCAD format in addition to PDF files. Similarly, text and spreadsheet files shall be completed in Microsoft Word and Excel respectively, with one electronic copy provided in Word/Excel format in addition to PDF files. Both electronic and hard copies of all deliverables will be provided. A minimum of 1 week for each major deliverable will be allocated for Aurora Water review time. Specific Deliverables by task are identified below:



**TIMES FOR RENDERING SERVICES**

The times to complete the services above are based on an amendment execution date of January 2, 2024. The final schedule will be dependent on the Contractor’s construction schedule and lead times on equipment. The estimated schedule is below. Amendment two extended the contract termination to July 31, 2025.

<b>Task</b>	<b>Completion Date</b>
Amendment 3 Execution	Week of January 1, 2024
Construction Services	January 2024 - July 2025 (17 months)
Construction Substantial Completion	June 2025
Construction Final Completion	July 2025
Record Drawings, Asset Ingestion Form, and Arc Flash Report and Labels Delivered	July 2025

**COMPENSATION**

**\$185,272**

Consultants Not-to-Exceed Cost for the construction phase of this project is ~~\$198,814~~ for Tasks , 8, 9, and 10. Consultant’s hourly billing rates are defined by the current MESA VII Professional Design Services Agreement with the Owner. A detailed fee breakdown by task is provided in the attached table.

Direct costs include vehicle mileage charges, miscellaneous equipment and materials required for the project, printing, and postage and delivery charges. Vehicle mileage for travel directly related to project activities will be charged at the IRS prevailing rate, which is currently 62.5 cents per mile. Consultant does not charge for in-house incidentals such as photocopying, faxing, or computer time. Direct costs for copying and printing of project work products done by outside vendors will be charged to the project at cost.

**FEES AND CHARGES**

Estimated Engineering Fees and Other Direct Charges (ODCs) anticipated for the work are given in **Exhibit A**.

Exhibit A: Detailed Cost and Level of Effort			Amendment 3 Engineering Services during Construction - Piney Creek Lift Station Power Improvements											
Task	Task Description	Total Contract Amount	Dewberry											
			Direct Costs	Labor Cost	Total Hours	Eng IX	Eng VI - Struct. Eng	Eng VI - PM	Eng II	Elec. Eng VI	Elec. Eng V	Elec. Eng II	CAD Designer V	Admin IV
						\$ 252	\$ 195	\$ 195	\$ 127	\$ 206	\$ 190	\$ 138	\$ 149	\$ 114
<b>Lift Station Power Improvements Construction Services</b>														
<b>1</b>	<b>Project Management and QAQC</b>													
1.1	Project Management	\$ 14,700		\$ 14,700	90			48		6				36
1.2	QAQC	\$ 2,336		\$ 2,336	10	6				4				
	<b>Subtotal Task 1</b>	\$ 17,036	\$ -	\$ 17,036	100	6	0	48	0	10	0	0	0	36
<b>8</b>	<b>Construction Services</b>													
8.1	Preconstruction Conference	\$ 1,584		\$ 1,584	9			3	3	3				
8.2	Office Engineering Services													
8.2.1	Shop Drawing/Submittal Review	\$ 44,312		\$ 44,312	286		16	40	80	6	40	100	4	
8.2.2	RFI Review	\$ 16,334		\$ 16,334	104		4	10	24	6	20	40		
8.2.3	Change Order Review	\$ 16,748		\$ 16,748	106		4	8	24	6	24	36	4	
8.2.4	Asset Ingestion Form	\$ 5,844		\$ 5,844	38			8	24	6				
8.3	Construction Progress Meetings	\$ 14,378		\$ 14,378	78		4	46	12	4	12			
8.4	Periodic Site Visits During Construction	\$ 15,524	\$ 500	\$ 15,024	72	8		16		48				
8.5	Substantial and Final Completion	\$ 8,844	\$ 1,500	\$ 7,344	40	4		12	12	12				
8.6	Record Drawing Preparation	\$ 16,128		\$ 16,128	108		4	8	12		8	40	32	4
	<b>Subtotal Task 8</b>	\$ 139,696	\$ 2,000	\$ 137,696	841	12	32	151	191	91	104	216	40	4
<b>9</b>	<b>Electrical System Analysis</b>													
9.1	Review Submittal Docs & Build ETAP Model	\$ 3,296		\$ 3,296	16					16				
9.2	Onsite Equipment Verification & Travel	\$ 2,060		\$ 2,060	10					10				
9.3	Short Circuit Study	\$ 1,236		\$ 1,236	6					6				
9.4	Develop Protective Device Settings & Coordination Study	\$ 3,296		\$ 3,296	16					16				
9.5	Arc Flash Study	\$ 1,648		\$ 1,648	8					8				
9.6	Study Report & Arc Flash Labels	\$ 4,944		\$ 4,944	24					24				
9.7	Onsite Label Application & Setting Adjustments	\$ 2,060		\$ 2,060	10					10				
	<b>Subtotal Task 9</b>	\$ 18,540	\$ -	\$ 18,540	90	0	0	0	0	90	0	0	0	0
<b>10</b>	<b>Supplementary Services during Construction</b>													
10.1	Supplementary Services during Construction	\$ 10,000		\$ 10,000	0									
	<b>Subtotal Task 10</b>	\$ 10,000	\$ -	\$ 10,000	0	0	0	0	0	0	0	0	0	0
<b>Additional Construction Services Total</b>		<b>\$ 185,272</b>	<b>\$ 2,000</b>	<b>\$ 183,272</b>	<b>1,031</b>	<b>18</b>	<b>32</b>	<b>199</b>	<b>191</b>	<b>191</b>	<b>104</b>	<b>216</b>	<b>40</b>	<b>40</b>



# CITY OF AURORA

## Council Agenda Commentary

**Item Title:** Consideration to AMEND AN OPENLY SOLICITED CONTRACT with Cumming Management Group, Inc., Englewood, CO in the Amount of \$172,500.00 for Staff Augmentation for Aurora Water Project Management Services, Project NO R-2295

**Item Initiator:** Swirvine Nyirenda, Manager of Project Delivery Services, Aurora Water

**Staff Source/Legal Source:** Sarah Young, Assistant General Manager of Planning and Engineering, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney

**Outside Speaker:** N/A

**Council Goal:** 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sarah Young, Assistant General Manager of Planning and Engineering, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

On November 14, 2022, City Council APPROVED AN OPENLY SOLICITED CONTRACT to Cumming Management Group, Inc. in the amount of \$300,000.00 for staff augmentation for Aurora Water project management services as item 10k.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

To assist with the 2023 project workload, the Aurora Water Planning and Engineering (P&E) Division contracted with Cumming Management Group, Inc., to provide a staff augmentation project manager. The Division is projecting an increased workload for 2024. **These projects are in several of the utility's programs such as:** Pumping, Treatment, Storm Water, Transmission and Distribution, Storage and Operations and General Management. A majority of the projects involve rehabilitation or expansion of existing facilities and are deemed by the utility to be high priority. In order for the Division to meet its goal of starting these projects on time, additional project management resources are needed for 2024.

This amendment Number One extends the Cumming Group contract by 6 months at a cost not to exceed \$172,500.00 bringing the total contract amount to \$472,500.00. Future amendments are not anticipated at this time.

The fees and rates provided by Cumming Management are in line with the original agreement and are, therefore, considered to be fair and reasonable.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Revenue Impact  | <input type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact | <input type="checkbox"/> No Fiscal Impact            |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

Funding for this Amendment will come from the Water and Wastewater Fund operating budgets:  
ORGS: 52014 (Engineering Svcs- Water)  
52015 (Engineering Svcs – Sewer)  
52016 (Engineering Svcs – Storm)  
Account: 62200

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does the City Council approve an amendment to the openly solicited contract with Cumming Management Inc., Englewood, Colorado in the amount of \$172,500 for providing project management staff augmentation services for six months in the year 2024?

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**LEGAL COMMENTS**

Any change order or amendment that would cause the **cumulative** total of all change orders to a contract to exceed \$100,000 requires City Council approval. See, Sec. 2-676(II)(b)(3) A.C.C. (Hernandez)

**10.j. First Creek Interceptor Connection to Prologis Lift Station Project, Project No. 5906A**

Consideration to AWARD A COMPETITIVELY BID CONTRACT to American West Construction LLC, Denver, CO, in the amount of \$2,394,100 for the First Creek Interceptor Connection to Prologis Lift Station Project, Project No. 5906A, with \$500,000 to be funded and awarded in 2022

Andrea Long, Principal Engineer, Aurora Water / Dave Lathers, Senior Assistant City Attorney

**10.k. Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Cumming Management Group, Inc., Englewood, CO in the Amount of \$300,000.00 for Staff Augmentation for Aurora Water Project Management Services, Project NO. R-2295**

Sarah Young, Deputy Director Planning and Engineering / Dave Lathers, Senior Assistant City Attorney

**10.l. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Morton Electric, Inc., Pueblo, CO in the amount of \$2,419,708.30 for the 2022 Traffic Signal Construction; Project 5900A.**

Carlie Campuzano, Manager of Traffic, Public Works / Dave Lathers, Senior Assistant City Attorney

**10.m. Consideration to AWARD A SINGLE SOURCE CONTRACT to Flexential Corporation, Charlotte, NC in the Amount of \$234,306.00 for Hosted Datacenter Services.**

Waiver of reconsideration was requested to allow for a quicker transition to the new provider due to the critical services provided at the City datacenters.

Scott Newman, Chief Information Officer, Information Technology / Dave Lathers, Senior Assistant City Attorney

**10.n. Consideration to AWARD A SOLE SOURCE CONTRACT to Cadre Research Labs, Evanston, IL in the Amount of \$130,900.00 for the Purchase of a Top Match-3D High Capacity Imaging and Analysis System.**

Tim Dufour, Lieutenant, Police / Dave Lathers, Senior Assistant City Attorney

**10.o. Consideration of a Professional Services Agreement with Capitol Capital in the amount of \$71,000 for the 2023 State Lobbying Contract**

Sponsor: Angela Lawson, Council Member

Roberto Venegas, Deputy City Manager

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

10.p. **Consideration of a Professional Services Agreement with Holland & Knight in the Amount of \$120,000 for the 2023 Federal Lobbying Contract**

Sponsor: Angela Lawson, Council Member

Roberto Venegas, Deputy City Manager

Motion by Bergan, second by Sundberg to approve the consent calendar items 10a through 10c, and 10e through 10p.

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Lawson, Marcano, Medina, Murillo, Sundberg, Zvonek

11. **RESOLUTIONS**

11.a. **Homeless Initiative**

**R2022-195** A RESOLUTION FROM THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S DESIRE TO REDUCE THE NUMBER OF PEOPLE EXPERIENCING HOMELESSNESS THROUGH EMPLOYMENT-BASED PROGRAMMING AND CONDITIONS-BASED TRANSITIONAL HOUSING THAT LEADS TO SELF-SUFFICIENCY. THE CITY COUNCIL DIRECTS THE CITY MANAGER AND HIS STAFF TO SUPPORT THIS EFFORT BY DEVELOPING AND EXECUTING A COMPREHENSIVE APPROACH THAT ALIGNS WITH THE NECESSARY SUPPORT TO MEET THE NEEDS OF THE DIVERSE HOMELESS POPULATION IN AURORA

Sponsor: Mike Coffman, Mayor

Council heard public in-person testimony.

Mayor Mike Coffman provided a summary of the item.

Discussion on the Bergan Amendment

Mayor Coffman asked G. Koumantakis to speak to Mayor Pro Tem Bergan's previous amendment. G. Koumantakis explained that Mayor Pro Tem Bergan's previous amendment requires the campus to be operated by a nonprofit organization but does not allow the use of general fund revenues for construction, maintenance, or operations. G. Koumantakis said that Mayor Coffman wants to change this into the city being responsible for maintaining the facility and reimbursing the operator for the cost of the low-barrier emergency shelter. Mayor Pro Tem Bergan asked if the city would only be responsible for maintenance but not operations. Mayor Coffman confirmed this. He explained that Colorado Springs Rescue Mission was reimbursed by the city for the first phase. They raised money from foundations, grants, and CDBG money, but not general funds for Colorado Springs to provide programming and transitional housing, and work. Rescue Mission also mentioned that Aurora may not need general fund revenue to support the low-barrier emergency shelter.

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*



# CITY OF AURORA

## Council Agenda Commentary

**Item Title:** Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Oalminagorta Consulting, LLC., Nibley, UT in the Amount of \$162,240.00 for Water Resources Modeling Services Staff Augmentation, Project NO. R-2383

**Item Initiator:** James DeHerrera, Manager of Planning Services, Aurora Water

**Staff Source/Legal Source:** Sarah Young, Assistant General Manager of Planning & Engineering, Aurora Water / Hanosky Hernandez, Sr. Assistant City Attorney

**Outside Speaker:** N/A

**Council Goal:** 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sarah Young, Assistant General Manager of Planning and Engineering, Aurora Water / Hanosky Hernandez, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A



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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)**Background**

Water Resources modeling requires a unique skillset and understanding of Aurora Water’s complex source water portfolio. Successfully capturing and conveying water from three distinct water basins within Colorado necessitates the need for detailed planning and evaluation. Water resources modeling helps inform critical projects such as reservoir permitting efforts, long-range planning, and shorter-term hydrologically dependent water availability. Aurora Water has identified the need for staff augmentation to ensure continuous operations for these purposes.

**Request for Proposal (RFP) Results**

This RFP, as advertised on November 13, 2023, requested qualified consultants to provide a staff augmentation Water Resources Hydraulic Modeler for services in the Aurora Water Planning and Engineering Division for a period of 12 months with the option for up to four additional years, in 12-month increments. Consultants were asked to provide resumes of candidates that had the appropriate education, experience, and knowledge to meet Aurora Water’s needs.

Two (2) firms, BuzzClan, LLC. and Oalminagorta Consulting, LLC. submitted responses to the RFP. No Aurora firms submitted a proposal.

Both firms were evaluated based on the following criteria contained in the RFP and Oalminagorta Consulting, LLC. was selected as the top-ranked firm:

- Firms background, experience and understanding of the Scope of Services, including past record of performance;
- Experience of proposed candidate as it relates to the primary duties and responsibilities, including ability to manage Water Resources Modeling projects of varying complexity;
- Proposed hourly billing rate;
- Overall quality and responsiveness of the proposal.

Oalminagorta Consulting, LLC. will provide a Water Resources Hydraulic Modeler for up to 2,080 hours for one (1) year from the date of award for a total not to exceed amount of \$162,240 (\$78 per hour), with the option to extend for up to four additional years, in 12-month increments. Typical industry rates for third party contracts in the modeling realm range from \$150 to \$250 per hour. Oalminagorta Consulting, LLC’s rate is lower than BuzzClan, LLC.’s proposed rate and is therefore considered to be fair and reasonable and a good value for Aurora Water and the City.

**Recommendation**

Based on the above, staff recommends the award of an OPENLY SOLICITED CONTRACT to Oalminagorta Consulting, LLC., Nibley, UT in the amount of \$162,240 for Water Resources Modeling Services Staff Augmentation, Project NO. R-2383.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to “Questions for Council”)

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Revenue Impact  | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

Funding for this contract will be from the Operating Water Fund in the amount of \$162,240.00.  
ORG: 52014-62200 – 50% (Planning & Engineering)  
ORG: 52018-62200 – 50% (Water Resources)

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

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**QUESTIONS FOR COUNCIL**

Does City Council approve the award of an OPENLY SOLICITED CONTRACT to Oalminagorta Consulting, LLC., Nibley, UT in the amount of \$162,240 for Water Resources Modeling Services Staff Augmentation, Project NO. R-2383?

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**LEGAL COMMENTS**

Contracts for the purchase of supplies, services, and construction shall be awarded to the lowest responsive bidder or most advantageous proposal as specified in the Aurora City Code. See, Sec 2-671 et. seq. A.C.C. (Hernandez)

## Staff Augmentation For Aurora Water: Water Resources Modeling Services

Submitted By:

Oalminagorta Consulting, LLC  
Omar Alminagorta Cabezas, Manager

### SCOPE OF SERVICES (Based on Section I of the Proposal)

- Provide **Water Resource Modeling support** using the current Water Resource model. At the time of this contract, the modeling software is Excel CRAM.
- Modeling support includes model review and documentation. **Model operation and data analysis**
- **Reviewing model** runs and data outputs by third parties.
- Provide information, including modeling results, that will help inform **City Water Accounting**.
- Operate, and provide recommendations on ways to improve, the current City of Aurora water modeling **forecasting** tool.
- Evaluate and communicate current and future yield conditions to the **Drought Action Team**.
- **Support the Wild Horse project** by performing and reviewing model runs, creating documentation, and providing data analysis for review and use by the Aurora Water project team.
- Perform modeling exercised to **support Colorado River analysis** as requested by Aurora Water staff.
- **Explore alternative water system models** and report back results to the Aurora Water team. Provide owner-representative services to help develop, advertise, review, and provide recommendations for an alternative water system model procurement process.

### Total Annual Contract

Proposed Hourly Work Rate: \$ 78.00 per hour

Total Annual Contract: \$ 78/hr \* 2080 hrs= \$ 162,240



# CITY OF AURORA

## Council Agenda Commentary

**Item Title:** Consideration to APPROVE A CHANGE ORDER TO AN EMERGENCY CONTRACT to TRS Corp, Englewood, CO in the Amount of \$126,000.00 for Professional Review Services for the Development Review Backlog On Call Contract, through June 30, 2024.

**Item Initiator:** Cyndi Winner, Procurement Agent, Finance

**Staff Source/Legal Source:** Darren Akrie, Land Development Review Supervisor, Public Works / Hanosky Hernandez, Senior Assistant City Attorney

**Outside Speaker:** N/A

**Council Goal:** 2012: 1.0--Assure a safe community for people

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Darren Akrie, Land Development Review Supervisor, Public Works / Hanosky Hernandez, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

The award of an emergency contract to TRS Corp for on call professional review services to help with the development review backlog in the not-to-exceed amount of \$350,000.00 was reported on the Weekly Report to Council dated March 7, 2022.

**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

This is a request to award a change order to TRS' emergency contract for on call professional review services. Currently, Real Property development review staff have a backlog of reviews to complete as a result of workload, putting them behind schedule in meeting city defined timelines for review and developer project schedules. This change order is to accommodate the ongoing influx of development-related projects being submitted to the city. This influx has necessitated a review of TRS' current contract funding and to ask for an increase in contract funding to ensure adequate provisions are in place to manage the increased workload effectively and quickly. The awarding of this change order is paired with ongoing internal process improvement efficiencies.

Pricing was requested from TRS, and it is in accordance with the original contract. Therefore, it is considered to be fair and reasonable.

Based on the above, it is staff's recommendation to approve a CHANGE ORDER TO AN EMERGENCY CONTRACT to TRS Corp, Englewood, CO in the amount of \$126,000.00 for Professional Review Services for the development review backlog on call contract through June 30, 2024.

**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

Funding will be paid from: Org 49021 (Engineering Services - EDR) and Acct 62200 (Services - Professional)

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

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**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

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**QUESTIONS FOR COUNCIL**

Does Council approve a CHANGE ORDER TO AN EMERGENCY CONTRACT to TRS Corp, Englewood, CO in the amount of \$126,000.00 for Professional Review Services for the development review backlog on call contract, through June 30, 2024?

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**LEGAL COMMENTS**

Any change order or amendment that would cause the **cumulative** total of all change orders to a contract to exceed \$100,000 requires City Council approval. See, Sec. 2-676(II)(b)(3) A.C.C. (Hernandez)

AWARD NUMBER	COMPANY/DESCRIPTION OF AWARD	AWARD AMOUNT	CODE SECTION
<p><b>TBD</b></p> <p>Dept: Public Works</p>	<p><b>HDR ENGINEERING</b></p> <p><b>DENVER, CO</b></p> <p>Award of an emergency contract for on call professional review services to help with the development backlog. Currently, Real Property development review staff have a backlog of reviews to complete, putting them behind schedule. This is due to the workload / continued growth within the City. Therefore, this is considered to be an emergency purchase.</p> <p><i>City Code 2-675 provides that the City Manager or Deputy City Manager of Administrative Services is empowered to authorize purchases to be designated as emergency purchases, and processed as expeditiously as possible without competition, regardless of the dollar amount.</i></p>	<p>\$350,000.00</p>	<p>2-675</p>
<p><b>TBD</b></p> <p>Dept: Public Works</p>	<p><b>TRS CORP</b></p> <p><b>ENGLEWOOD, CO</b></p> <p>Award of an emergency contract for on call professional review services to help with the development backlog. Currently, Real Property development review staff have a backlog of reviews to complete, putting them behind schedule. This is due to the workload / continued growth within the City. Therefore, this is considered to be an emergency purchase.</p> <p><i>City Code 2-675 provides that the City Manager or Deputy City Manager of Administrative Services is empowered to authorize purchases to be designated as emergency purchases, and processed as expeditiously as possible without competition, regardless of the dollar amount.</i></p>	<p>\$350,000.00</p>	<p>2-675</p>



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Residential Roof Inspection Services – Safebuilt Colorado
<b>Item Initiator:</b> Brian Hancock, Procurement Agent, Purchasing Services
<b>Staff Source/Legal Source:</b> David Schoomaker, Manager of Building Services, Public Works / Hanosky Hernandez, Senior Assistant Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 6.1--Ensure the delivery of high quality services to residents in an efficient and cost effective manner

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Consideration to AWARD A COMPETITIVELY BID CONTRACT to Safebuilt Colorado, LLC, Loveland, Colorado in the Amount Not-to-Exceed \$750,000.00 for Residential Roof Inspection Services as Required for Building Permit Requests through December 31, 2024; B-4712

A waiver of reconsideration is requested to ensure the associated contract can be executed by December 31, 2023 and have all funding encumbered.

David Schoonmaker, Manager of Building Services, Public Works / Hanosky Hernandez, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*



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**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

The Building Inspections Division of Public Works performs residential roof inspections in order to complete building permits. Due to the high amount of construction activity and resulting permit requests, the division would like to award a contract to SAFEbuilt to perform the roof inspections for the next year.

Staff conducted an Invitation for Bids (IFB) process with submittals due on November 15, 2023. Interested contractors were asked to submit technical qualifications and separate sealed bid pricing. The first phase of the bid was to pre-qualify contractors, and the second phase was to open the sealed bids of the pre-qualified contractors with the intent of making an award to the lowest responsive bidder. The City required contractors to demonstrate a minimum of four (4) staff who have either a B1 Residential Building Inspector or B2 Commercial Building Inspector certification. This level of staffing is needed due to the high volume of residential roof inspections that will be required each week by the City, which could be as high as 500. The required certification is consistent with the certification City building inspection personnel are required to hold.

The City received only one response to this IFB, from SAFEbuilt Colorado, LLC.

SAFEbuilt's technical qualifications were reviewed, and they were considered to be qualified, as well as demonstrating the required minimum four (4) certified staff to perform the services. Their sealed bid was opened, and they provided a price of \$70.00 per completed permit. Due to the fact that the bid was submitted with the expectation of competition, it is considered to be fair and reasonable. Because the services are on an as required basis, and in order to accommodate any unanticipated permit requests, the City is requesting a total not-to-exceed award amount of \$750,000.00 for these services during the annual period.

City Council must approve all awards of at least \$50,000.00, where formal competitive solicitation procedures resulted in less than three (3) bids.

Based on the above, staff recommends that the City award a competitively bid contract to SAFEbuilt Colorado, LLC, Loveland, Colorado in the amount not-to-exceed \$750,000.00 for residential roof inspection services as required through December 31, 2024.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Revenue Impact  | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

The not-to-exceed amount of \$750,000.00 is budgeted in the Development Review Fund, Building Division of Public Works Department, and will be paid from the following: Org 49040 (Building Services – EDR) and 62200 (Services – Professional).

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

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**QUESTIONS FOR COUNCIL**

Does City Council approve the award of a competitively bid contract to SAFEbuilt Colorado, LLC in the amount not-to-exceed \$750,000.00 for residential roof inspection services as required for building permit requests?

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**LEGAL COMMENTS**

Contracts for the purchase of supplies, services, and construction shall be awarded to the lowest responsive bidder or most advantageous proposal as specified in the Aurora City Code. See, Sec 2-671 et. seq. A.C.C. (Hernandez)



# CITY OF AURORA

## Council Agenda Commentary

**Item Title:** Consideration to AWARD A SOLE SOURCE CONTRACT in the Amount of \$374,400 to Falck Rocky Mountain Inc, Aurora, Colorado to Provide Medical Health Staffing Services for the Aurora Mobile Response Team

**Item Initiator:** Jessica Prosser, Housing and Community Services Director

**Staff Source/Legal Source:** Courtney Tassin, Crisis Intervention Program Manager, Housing and Community Services / Hanosky Hernandez, Senior Assistant City Attorney

**Outside Speaker:** N/A

**Council Goal:** 2012: 6.1--Ensure the delivery of high quality services to residents in an efficient and cost effective manner

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Courtney Tassin, Crisis Intervention Program Manager, Housing and Community Services / Hanosky Hernandez, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** Use dropdown menu to select committee from list.

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval
- Forwarded Without Recommendation  Minutes Not Available
- Minutes Attached

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The award of a SOLE SOURCE contract in the amount of \$45,000.00 to Falck Rocky Mountain, Aurora, Colorado for the Mental Health Staffing Program, was reported on the Weekly Report To Council, dated January 19, 2021.

The award of a SOLE SOURCE contract in the amount of \$150,000.00 to Falck Rocky Mountain, Aurora, Colorado for the Mental Health Staffing Program (Aurora Mobile Response Team), was approved by City Council, June 6, 2022, Agenda Item 10c.

The award of A SOLE SOURCE contract in the amount of \$200,000 to Falck Rocky Mountain, Aurora, Colorado for the Mental Health Staffing Program (Aurora Mobile Response Team), was approved by City Council, February 13, 2023 , Agenda Item 9.a.1.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

In the 2021 budget a pilot program was approved to create a mobile response team where a licensed mental health professional and paramedic respond to low risk, low acuity situations where law enforcement is not required. A City of Aurora cross-departmental team along with Aurora Mental Health and Falck Rocky Mountain collaborated to design the program, create policies and recruit the members of the team during the first half of 2021.

In 2022, the Aurora Mobile Response Team (AMRT) filed a spring supplemental to continue reimbursing the **partnership agencies for their services provided. An additional allocation of funds to each agency's contract was requested to sustain the team at its current staffing level through 2022.**

**2023 Pricing**

Falck Rocky Mountain- encompasses personnel services, van maintenance and upkeep, fuel costs

\$60/hr x 2

Total=\$249,000

Rollover funds were being leveraged to fulfill the remainder of the cost (\$49,000.00)

Pricing was consistent with the previous award and was therefore considered to be fair and reasonable.

This is a sole source contract as AMRT staff (paramedic/ EMTs) are already employed by this agency to utilize their services to support operations for the AMRT for 2024. Falck Rocky Mountain is currently the 911 ambulance contract for the City of Aurora and supplies the van that AMRT currently operates out of, the paramedic/EMT, and any medical supplies needed to stock the van. Falck has currently created two FTE for this role, to allow the program to remain unaffected by staffing challenges within the agency.

In the 2024 budget, AMRT was approved for additional funding to add a third unit to continue supporting public safety partners by alleviating calls for service that do not require criminal action or lifesaving care. Falck Rocky Mountain's cost encompasses personnel services (3 EMTs), van maintenance and upkeep and fuel costs.

\$60/hr x 2080 = \$124,800

\$124,800 x 3 = \$374,400

Pricing is consistent with the previous award and is therefore considered to be fair and reasonable.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact

Workload Impact       No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

The 2024 budget is in org 64541, Aurora Mobile Response Team.

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

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**QUESTIONS FOR COUNCIL**

Does council approve the award of a sole source contract to Falck Rocky Mountain as presented?

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**LEGAL COMMENTS**

Purchase orders or contracts in any amount may be awarded without benefit of formal competitive bidding when only one specific source is known to exist for the required supplies or services (sole/single source), and the Purchasing Manager approves the use of negotiation prior to award (Section 2-674 (10) A.C.C.) (Hernandez)

COMPANY	DESCRIPTION OF AWARD	AWARD AMOUNT	BID NUMBER
<p><b>FALCK ROCKY MOUNTAIN</b></p> <p><b>AURORA, CO</b></p> <p><b>Dept: City Manager's Office</b></p>	<p>Award a sole source contract for the Mental Health Staffing Program Agreement.</p> <p>The City of Aurora (the "City") and Falck Rocky Mountain, Inc. ("Falck") desire to work together on a pilot program to handle behavioral health calls through the City's 911 system (the "Program"). The Program shall consist of five (5) eight (8)-hour shifts per week, the scheduling of which shall be mutually acceptable to the City and Falck and shall not result in overtime pay for any participants.</p> <p><i>Purchases where one firm, and only one firm is known to be capable of providing items and/or services are authorized to be awarded through noncompetitive negotiations. 2-674-10</i></p>	<p><b>\$45,000.00</b></p>	<p>N/A</p>

Sarah Young, Deputy Director of Planning and Engineering, Aurora Water / Dave Lathers, Senior Assistant City Attorney

- 10.b. **Consideration to AWARD AN OPENLY SOLICITED contract to BT Construction, Inc., Henderson, Colorado in the amount of \$959,202.00 for Work Package NO. 4 of the Rampart Pipeline Sliplining Program Phase 2 – Steel Pipe Procurement Project, Project No. R-5829A.**

Dean Bedford, Principal Engineer, Aurora Water / Dave Lathers, Senior Assistant City Attorney

- 10.c. **Consideration to AWARD A COMPETITIVELY BID CONTRACT to Velocity Constructors, Inc., Englewood, Colorado in the amount of \$2,187,011.00 for construction of the 2022 PRV Vault Improvement Project, Project No. 5875A.**

Dean Bedford, Principal Engineer, Aurora Water / Dave Lather, Senior Assistant City Attorney

- 10.d. **The award of and OPENLY SOLICITED contract to HDR Engineering, Inc., Denver, Colorado in the amount of \$793,628.00 for providing engineering and construction services for the Senac Creek Interceptor Project.**

Andrea Long, Senior Engineer, Aurora Water / David Lathers, Senior Assistant City Attorney

- 10.e. **Consideration to AWARD A SOLE SOURCE CONTRACT in the amount of \$150,000.00 to Falck Rocky Mountain Inc, Aurora, Colorado to provide medical health staffing services.**

Courtney Tassin, Mental Health Program Manager / Dave Lathers, Senior Assistant City Attorney

Courtney Tassin, Mental Health Program Manager, provided a summary of the item.

CM Coombs asked if the response team's servicing is being affected. Courtney Tassin explained that they hire individuals specifically for the mobile response team. She added that they have three backup paramedics that have been responding with the mobile response team.

Motion by Bergan, second by Marcano to approve the consent calendar item 10e.

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Lawson, Marcano, Medina, Murillo, Sundberg, Zvonek

- 10.f. **Consideration to AWARD A SOLE SOURCE CONTRACT in the amount of \$80,000.00 to Aurora Mental Health Center, Aurora, Colorado for the 911 Mobile Crisis Response Program.**

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

7. **PUBLIC INVITED TO BE HEARD**

(non-agenda-related issues only)

Council heard public in-person testimonies on non-agenda-related items.

8. **ADOPTION OF THE AGENDA**

Motion by Coombs, second by Sundberg to adopt the agenda.

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Lawson, Marcano, Medina, Murillo, Sundberg, Zvonek

9. **CONSENT CALENDAR - MOTIONS**

*Any member of Council may request an item be removed from Consent Calendar and considered separately. Removed items are considered immediately following the adoption of the Consent Calendar.*

9.a **Motions**

9.a.1 **Consideration to AWARD A SOLE SOURCE CONTRACT in the Amount of \$200,000.00 to Falck Rocky Mountain Inc, Aurora, Colorado to Provide Medical Health Staffing Services for the Aurora Mobile Response Team**

Courtney Tassin, Crisis Intervention Program Manager, Housing and Community Services / Dave Lathers, Senior Assistant City Attorney

9.a.2 **Consideration to EXTEND A COMPETITIVELY BID CONTRACT to A-1 Chipseal Co., Denver, Colorado in the Amount of \$3,691,069.03 for the 2023 Surface Treatment Program. Project No. 5818A (Second Extension Year)**

Staff requests a waiver of reconsideration due the length of the project and sensitivity to weather conditions that can cause delays.

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*



Lynne Center, Deputy Director of Public Works Operations / Dave Lathers, Senior Assistant City Attorney

- 9.a.3      **Consideration to EXTEND A SINGLE SOURCE CONTRACT to Quantum Water & Environment, Lakewood, Colorado in the Not-to-Exceed Amount of \$265,549.55 for Continued Highway 30 Landfill Investigation, Monitoring and Reporting Services**

Jeffrey Moore, Manager of Oil and Gas / Dave Lathers, Senior Assistant City Attorney

- 9.a.4      **Consideration to AWARD A COMPETITIVELY BID CONTRACT TO B&M Roofing, Frederick, CO in the Amount of \$2,119,623.00 for the Aurora Municipal Center (AMC) Roof Replacement; Project 5903A**

John Perkins, Public Works / Dave Lathers, Senior Assistant City Attorney

9.b      **Planning Matters**

9.c      **Appointments to Boards and Commissions**

- 9.c.1      **Consideration to Appoint Two (2) Members to the Human Relations Commission**

Kadee Rodriguez, City Clerk / Dave Lathers, Senior Assistant City Attorney

Motion by Gardner, second by Bergan to adopt the agenda.

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Lawson, Marcano, Medina, Murillo, Sundberg, Zvonek

10.      **CONSENT CALENDAR - RESOLUTIONS AND ORDINANCES**

◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Aurora Housing Authority
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2022

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be used by Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Aurora Housing Authority for \$100,000.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$100,000

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$100,000

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does the council wish to move this forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT**  
**CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS**  
**ASSISTANCE LISTING NUMBER (formerly CFDA):**  
**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and The Aurora Housing Authority whose principal office street address, 2280 S Xanadu Way Aurora CO 80014 hereinafter referred to as the “Subrecipient.” UEI (if applicable): E3LML9MG9AE3. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed One-hundred Thousand Dollars and no/100 (U.S. \$100,000.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) TERM OF PROJECT. The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) AGREEMENT. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,



dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Aurora Housing Authority  
2280 S Xanadu Way  
Aurora, Colorado 80014

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_



EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

1. 1. Project Description

a. Aurora@Home serves families in the city of Aurora by providing Rapid Rehousing and Homeless Prevention Programs. Programs consist of housing stabilization services in the form of rental assistance, case management, landlord mediation, and eviction prevention. Program participants are responsible for two program goals, housing stabilization and income progression. Families pay rent on a progressive rent schedule and meet with a case manager on a monthly basis to assess housing stabilization goals. The program adheres to the following evidence-based practices to inform policy and to carry out services: Progressive Engagement; Trauma Informed Care; Motivational Interviewing; Strengths Based Methodology; Harm Reduction; Social Identity Theory; and Family Systems Theory.

2. Staffing Cost

a. Laura Getz, LSW, serves as AHA's Manager of Homeless and Housing Stability Services. This position manages all homeless programs at AHA, as well as manages a caseload of program participants. Ms. Getz coordinates and supervises all homeless services staff. In addition, as case manager, she resources, supports, advocates and walks alongside program participants as they work toward long term housing stability.

Victoria Garrick, LCSW, is the Aurora@Home Navigator. Ms. Garrick carries a caseload of program participants coordinating services, resourcing, supporting, advocating and walking alongside them as they work toward long term housing stability.

This team of social workers has extensive experience working with families whose barriers to self-sufficiency include housing instability. All are trained in Motivational Interviewing, Trauma Informed Care, and Housing First.

AHA contracts with Cathy Blair, Aurora@Home Landlord Recruiter, who builds relationships with Aurora property owners and managers, who house Aurora@Home participants. She works with families to locate housing, helps them navigate the lease up process, schedules the HQS/Basic Habitability inspections and mediates any difficulties that arise between owners/property managers and families once housed.



b. 1.5 FTE Case Manager salaries and benefits will be funded by this program. The full contract costs of the Aurora@Home Landlord Recruiter will be funded by this program.

c. The staff to client ratio is 1:20.

### 3. Direct client services

a. The following services will be provided through this funding:

i. Housing Stability Case Management - In home case management services with a focus on housing stability, increasing income, accessing benefits, maintaining lease compliance and limiting returns to homelessness in the future

ii. Housing Navigation - Landlord Recruiter will assist with locating reasonable rental units, locating and retaining property managers that will work with lower income tenants, assist in reviewing leases and mediation between tenants and landlords

iii. Personnel - Staff salaries and benefits for case management and housing navigation for families served through homeless prevention and rapid rehousing programs in Aurora@Home.

iv. Supplies - Hygiene supplies, beds and bedding for participants that cannot be obtained through other community resources, staff phones, office supplies

b. The following financial assistance will be provided with this fund:

i. Application fees, supplies such as hygiene supplies, beds and bedding will be provided to participant only if no other community resources or programs can assist.

ii. Financial assistance, such as rent and deposit assistance, will be provided through other funding sources such as HOME and CDOH State Tax Funds. Utility Assistance will be provided through Energy Outreach Colorado. Supportive Services will be provided through Public Benefit Programs such as TANF and SNAP, whenever eligible.

c. Needs/risk assessments for all clients to determine goals

i. AHA will utilize HMIS intake forms, VISPDAT or other equivalent assessment tool through MDHI, and will create a housing stability plan. AHA will conduct background checks and credit checks to assist in a housing search plan with Landlord Recruiter

ii. Case manager will conduct ongoing Needs/Risk Assessment and goal setting

d. Population Served

i. Families with dependents

e. Assistance Documents

i. Current Income Statements

1. Paystubs, Work Number Verification, Employment Verification Form, Proof of Child Support, Proof of Public Benefits, and Self-

Certification of Zero Income form will be obtained quarterly, kept in the file and inputted as a status assessment in HMIS

ii. W9 From Creditor/Landlord

1. W-9 will be kept on file

iii. Photo ID

1. State issued ID or passport

iv. Ledger/Eviction Notice

1. Collected for all eviction and homeless prevention families and kept on file

v. Utilities Bill

1. AHA has Energy Outreach Colorado Fund to assist with utilities. AHA will not utilize HOME funds for utilities

vi. Lease

1. Signed copy of the lease will be kept on file

f. All program participants must be entered into HMIS

- i. All HMIS intake and exit paperwork will be kept in the file. Case Managers will input status and annual assessments, track services and capture case notes utilizing HMIS

4. Shelter Operational Costs

- a. N/A

5. Performance Goals

a. AHA will utilize HUD Performance Benchmarks for RRH and HP

- i. Households move into housing in an average of 30 days of less from program entry

- ii. 80% of households exit the program into a permanent housing destination

- iii. 85% of households that exit to permanent housing and do not become do not become homeless again within a year

b. In addition to the HUD Performance Benchmarks, AHA will track the following:

- i. Number of households who increased income from program entry to program exit

- ii. Number of households who accessed public benefits for which they were eligible

c. AHA has a history of meeting HUD performance benchmarks

- i. In 2022, AHA served 64 households, which included 81 adults and 139 children under the age of 18

1. 86.2% of households who exited in 2022, exited to a permanent housing destination. AHA referred 10 households to housing choice vouchers to maintain their housing stability due to insufficient income for their household size as the biggest barrier to maintaining long term housing stability and to help reduce future returns to homelessness.

2. 100% of families enrolled in 2022, accessed benefits for which they were eligible for.

3. 65.5% of households increased their income from the start of the program to exit. The average household who increased their income from start to exit, increased their income 365% over the course of the program.

4. The Landlord Recruiter helped secure housing for 27 families. The average family was housed within 29 days of program entry.

ii. Thus far in 2023, AHA has served 48 families, which include 62 adults and 98 children under the age of 18.

1. The Landlord Recruiter has provided housing navigation and helped 13 families move into housing as of September 2023. The average length of time between program enrollment to a family being housed is 29 days.

2. 69% of families who have exited thus far in 2023 have increased their income and 100% of families who are eligible have accessed benefits. AHA has exited 4 families with a Housing Choice Voucher who were unable to maintain stability without longer term rental assistance.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General



Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Late Submission Approval for Agenda Item

<b>Item Title:</b> American Rescue Plan Items 12 items
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

**CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:**

- There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date
- The delay will result in an adverse financial impact to the city
- The item is related to a disaster and must be addressed before the next available meeting

**COUNCIL MEETING DATES FOR LATE SUBMISSION:**

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**EXPLANATION:** (Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be used by Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

Jessica Prosser

Agenda Item Initiator Name

12/11/2023

Agenda Item Initiator Signature

Date

Roberto Venegas

Late Submission Approver Name (Deputy City Manager)

Roberto Venegas (Dec 11, 2023 18:39 MST)

12/11/2023

Late Submission Approver Signature

Date



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Aurora Mental Health and Recovery
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** n/a

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Aurora Mental Health and Recovery for \$95,000

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$95,000

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT**  
**CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS**  
**ASSISTANCE LISTING NUMBER (formerly CFDA):**  
**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Aurora Mental Health and Recovery whose principal office street address, 1290 Chambers Road, Aurora, Colorado 80011 hereinafter referred to as the “Subrecipient.” UEI (if applicable): FD6JYG9QQRG9. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Ninety-five Thousand Dollars and no/100 (U.S. \$95,000.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) TERM OF PROJECT. The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) AGREEMENT. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.



## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Aurora Mental Health and Recovery  
1290 Chambers Road  
Aurora, Colorado 80011

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_





EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

1. Project description
  - a. What evidence-based practices or philosophies does will this project follow
    - i. This project will provide homeless prevention for individuals and families at-risk of losing housing who also have behavioral health concern or condition. The project will provide housing case management and behavioral health therapeutic services through drop-in hours at our office location, and through individual client contacts in community-based locations. Evidence- based practices include critical time intervention, progressive engagement, housing first, and trauma-informed care.
2. Staffing Cost
  - a. Provide a list of positions and brief descriptions for positions that will be funded
    - i. Homeless Prevention Case Manager (0.2 FTE): To provide case management services to clients, including benefits enrollment and housing assistance.
    - ii. Behavioral Health Therapist (0.185 FTE): To provide behavioral health services to unhoused clients.
  - b. What percentage of staff benefits and/or salary will be funded
    - i. Homeless Prevention Case Manager (0.20 FTE) and Behavioral Health Therapist (0.185 FTE). Costs include the salary and fringe benefits for the identified FTE.
  - c. Staff to client ratio:
    - i. The team maintains a ratio of 1 staff to 20 clients, which aligns with best practices for homeless prevention case management.
3. Direct client services
  - a. Services provided The Homeless Prevention project will make care more accessible to individuals experiencing homelessness by providing the following services:
    - i. Homeless Prevention
    - ii. Drop-in hours
    - iii. Case management

iv. Behavioral health screening, assessment, and treatment v. Provision of client supplies

b. Financial Assistance

i. Client wellness and engagement resources, cold weather supplies, hygiene kits.

ii. Food

iii. Application fees

c. Conduct needs/risk assessments for all clients to determine goals

i. AMHR will perform the required client intake, conduct a client needs/risk assessment, and complete goal setting. We utilize the VI-SPDAT as well as internal measures to enroll clients into both HMIS and our internal electronic health record. Project staff collaborate with each client to determine an individual housing case management needs plan, which includes case management services, housing plan, and mental health needs. The plan includes specific goals for each client, including mental health, financial stability, housing, medical, and other goals identified by the client.

d. Population served

i. Individuals and couples experiencing homelessness.

ii. Families experiencing homelessness.

iii. Youth experiencing homelessness.

iv. Individuals, couples, families, and youth at risk of homelessness

e. Assistance Documents AMHR will collaborate with clients to complete and obtain all required documentation related to project enrollment and assistance provided. All information is maintained in our internal client files and documented in both HMIS and our internal electronic health record as required. We have processes in place to collect the following requirement documents:

i. Current Income Statements

ii. W9 From Creditor/Landlord

iii. Photo ID

iv. Ledger/Eviction Notice

v. Utilities Bill

vi. Lease

f. All program participants must be entered into HMIS

i. AMHR project staff will enter all program participants into HMIS. We have dedicated time from our Client Service Representative to gather required documents and complete HMIS data entry according to timeliness and quality measures.

4. Shelter operational Costs

a. This project is not a shelter project, and no funds are requested for shelter operations.

5. Performance Goals

a. Performance measurables

i. We will measure our performance based on the following metrics:

1. The number of individuals who receive case management services for homeless prevention and the percentage of individuals served who are prevented from going to an unhoused situation

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General



Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Bridge House Ready to Work
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** n/a

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Jurinsky is sponsoring this item to fill the gap in funding for Bridge House Ready to Work for \$50,000

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$50,000

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$50,000

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Bridge House Ready to Work whose principal office street address, 1425 Patton Drive Boulder Colorado 80303 hereinafter referred to as the “Subrecipient.” UEI (if applicable): W9CFC296BZM3. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Fifty Thousand Dollars and no/100 (U.S. \$50,000.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) TERM OF PROJECT. The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) AGREEMENT. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,



dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Bridge House Ready to Work  
1425 Patton Drive  
Boulder Colorado 80303

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_







EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

**NAME OF AGENCY:** Bridge House - Ready to Work Aurora

**NAME OF PROJECT:** Ready to Work

**POINT OF CONTACT FOR THE PROJECT:** William Sweeney

**FUNDING SOURCE REQUESTED:** MJ Funds

Please note, you will need to fill out **one scope of work, per project** you are applying for.

**1. Project Description**

**1. Please provide brief description of your program/project**

Bridge House/Ready to Work Aurora believes in, respects and empowers people who are experiencing homelessness. We connect them to housing and employment opportunities so they can realize and embrace their future.

Bridge House's Ready to Work (RTW) Program provides a pathway to independence for adults experiencing homelessness. Ready to Work offers balanced and effective solution by offering 3 elements within 1 program:

- 1) Paid employment in a RTW owned social enterprise,
- 2) Dormitory-style housing in one of our RTW Houses in Aurora or Boulder, and
- 3) Case management support services which include addiction recovery, financial management and employment/housing counseling.

RTW is the only integrated, revenue-generating economic development and housing model in Colorado that offers a "work-first" approach to breaking insidious and expensive cycles of homelessness, addiction, and incarceration for the benefit of the individual and community. Bridge House opened Ready to Work Aurora in late 2018 with capacity to serve 50 people.

Our project plan encompasses the 3 phases of the lifecycle of a Ready to Work participant: Intern, Trainee and Aftercare.

### Intern

Although the average time in the RTW program is 1 year, RTW participants and the community realize positive and immediate benefits as soon as clients join RTW. Upon entering the program, participants undergo a 2-4 week trial internship period where both they and RTW case managers assess whether RTW is a good fit. During this time, interns work unpaid in the RTW house providing light maintenance and meet with case managers. Since the onset of COVID, we have also provided housing to our interns in the RTW House so they do not have to sleep on the street or in a shelter. We are currently providing incentives to interns to get vaccinated.

### Trainee

After interns transition to the trainee phase of the RTW program, they will be assigned to our social enterprise crew. RTW operates an Outdoor Landscaping operation that offers supplemental services to municipalities and business improvement districts. Through employment in these social enterprises, trainees build resumes, gain work skills, earn income and pay taxes. RTW grows the local economy, empowers people through work, and changes perceptions of homelessness. Social enterprise revenue is used primarily for trainee wages.

Our RTW House offers dormitory style housing for trainees. Living in RTW House provides a sense of community and positive living environment to support trainees' transition out of homelessness. While living in the house, trainees help maintain the property and are randomly drug-tested to ensure sobriety. All meals are provided to trainees while living in RTW House.

Ready to Work has a team of specialized case managers – Transitional, Behavioral, Employment and Housing case managers, who each work with interns and trainees through all stages of their participation in the Ready to Work program and develop personalized plans to meet their needs and goals. Through our case management supportive services, trainees meet with case managers and participate in life-skills training such as financial management and addiction recovery to remove barriers to mainstream employment and housing. Trainees are required to establish a savings account to ensure financial stability after they graduate. Case managers continue help trainees address social, medical and mental needs that have previously inhibited them from reaching self-sufficiency because they have been experiencing repetitive trauma on the streets.

Licensed clinicians and Case managers with requisite degrees and certifications, and oftentimes lived experience, lead evidence-based treatment groups using cognitive behavioral therapy practices, which are fundamental to the success of trainees. These clinical groups include Relapse Prevention, Early Recovery Skills, Seeking Safety and Parents on a Mission. Additional community support groups available to trainees include Recovery in Christ, Life Ring, Alcoholics/Narcotics Anonymous, Mindfulness and Life Skills. Although each trainee has benefits through Medicaid, Bridge House also works with a medical doctor who visits the RTW House to provide ad hoc medical care to trainees and advises staff on treatments.

When trainees reach month 6 in the RTW program, our Employment specialist teaches our proprietary Ready to Work Employment Services class, which incorporates a job readiness curriculum known as "Blueprint For Workplace Success. The RTW Employment specialist also helps trainees set goals and create career development plans using assessment tools and self-reflection. Work supervisors regularly fill out Trainee Progress and Evaluation Reports to provide feedback to the trainee and case manager. At approximately month 9, trainees begin the process of finding full-time employment beyond RTW.

Through skills assessments and one-on-one meetings, Employment specialists help trainees identify career paths that are most suitable to their personality and experience.

At month 10 or 11, trainees also begin meeting with our Housing Specialist to discuss permanent housing once they graduate from the program. Services include options for housing, filling out applications, and advice on living independently. Most clients do not have strong rental or credit histories. Building a track record of savings and rental history is a key component of RTW housing services. Our housing manager has relationships with local landlords, property management companies, and other groups who can assist our graduates with housing and funding.

Throughout the duration of the RTW program, we also provide internal opportunities for all case managers and trainees to interact as a group. Specifically, we have mandatory weekly house meetings that provides a forum for all RTW trainees to share opinions and ask questions without fear of judgement. At every house meeting, case managers share tips and stories on housing, employment and living independently. These stories usually come from relevant issues that our graduates face after they leave the program.

### Graduation/Aftercare

RTW participants graduate the program after they achieve full-time employment and permanent housing and fulfill program requirements of sobriety and workforce development training. RTW graduates find full-time employment in the medical, construction, property management, retail and nonprofit fields. Several graduates also work for Bridge House and Ready to Work Aurora.

We realize that our graduates have needs relevant to the amount of their time away from the program. Through our RTW Aftercare program, case managers connect with graduates through outreach as well as providing career advancement support, guidance and resources to assist them with their sobriety and success as they reintegrate back into their communities. Isolation and loneliness are typical feelings that graduates experience after leaving the RTW House. Graduates are invited to come back to the RTW House for Aftercare meetings and events or anytime they need community support.

## **2. Staffing Cost**

1. Provide a list of positions and brief descriptions for positions that will be funded  
Housing Specialist: assists trainees with housing placements as they exit the program.  
Intern Specialist: assists with our clients' transition into the program; conducts evaluations, moves them into the RTW House and works directly with the intern to assess whether RTW is a good fit.  
Employment Specialist: provides job readiness training and helps trainees set goals and create career development plans  
Aftercare Specialist: works with RTW graduates to prevent recurring homelessness.  
Case Manager: meets with trainees to provide life-skills training, financial management and addiction recovery to remove barriers to mainstream employment and housing.

2. What percentage of hours and benefits will this funding go towards  
Housing Specialist .50 FTE  
Intern Specialist .50 FTE  
Employment Specialist .45 FTE  
Aftercare Specialist .40FTE

Case Manager .45FTE

3. Staff to client ratio – 1:12

**3. Direct client services**

1. What services will be provided
2. What type of financial assistance will be provided to clients
3. Conduct needs/risk assessments for all clients to determine goals
  - i. Subrecipient is required to perform client intake, a client needs/risk assessment to determine a housing plan.
  - ii. Case manager will conduct Needs/Risk Assessment and goal setting
4. What population of clients will you be serving
5. Assistance Documents (if providing financial assistance to clients please include documentation that agency will be collecting)
  - i. Current Income Statements
  - ii. W9 From Creditor/Landlord
  - iii. Photo ID
  - iv. Ledger/Eviction Notice
  - v. Utilities Bill
  - vi. Lease
6. All program participants must be entered into HMIS

**4. Shelter Operational Costs**

1. What operational costs will this funding be used for

**5. Performance Goals**

1. How will you measure your performance – the primary measurement is the number of graduations.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).



EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Colorado Coalition for the Homeless
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** n/a

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Colorado Coalition for the Homeless for \$88,500 dollars.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$88,500

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$88,500

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Colorado Coalition for the Homeless whose principal office street address, 211 Champa Street Denver Colorado 80122 hereinafter referred to as the “Subrecipient.” UEI (if applicable): QZP9FEB7U672. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Eighty-eight Thousand Five Hundred Dollars and no/100 (U.S. \$88,500.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) TERM OF PROJECT. The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) AGREEMENT. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.



## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Colorado Coalition for the Homeless  
211 Champa Street  
Denver Colorado 80122

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_







EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

**1. Project Description**

- a. Renaissance Veterans Apartments at Fitzsimons offers permanent supportive housing to Veterans experiencing or at extreme risk of homelessness, with preference extended to Veterans experiencing chronic homelessness. **Provision of permanent supportive housing is the project's stated objective toward reaching the goal of ending homelessness for Veteran participants.**

All resident Veteran households receive rental assistance, the amount of which varies by individual and equals total monthly rent minus 30% of each individual Veteran household's adjusted monthly income. Thirty (30) resident Veteran households receive rental assistance through the Housing and Urban Development-Veterans Affairs Supportive Housing (HUD-VASH) program, which exists through a partnership of the U.S. Department of Housing (HUD) and the U.S. Department of Veterans Affairs (VA). Twenty-nine resident Veteran households receive rental assistance through HUD issued Project Based Housing Vouchers that are made available through the Colorado Department of Local Affairs, Division of Housing.

The local VA Homeless Program refers Veterans who receive HUD-VASH vouchers and become residents of Renaissance Veterans Apartments at Fitzsimons. At least half of the Veterans who receive Project Based Housing Vouchers and become residents of

Renaissance Veterans Apartments at Fitzsimons are referred through the Metro Denver coordinated entry system, OneHome. The remaining resident Veterans receiving Project Based Housing Vouchers are referred from organizations throughout the community or from other CCH projects/programs.

Supportive services offered to each Veteran household are oriented toward maintaining housing stability. Current programming is partially funded through a 2022 Marijuana Sales Tax Funding Agreement with the City of Aurora that expires on 12/31/2023. Since January 1, 2022, the project has supported 87.67% of residents (64 of 73) in maintaining their housing or transitioning to another permanent destination.

## 2. Staffing Cost

- a. Provide a list of positions and brief descriptions for positions that will be funded.
  - i. **Case Manager** – provides on-site support services to residents including connections to community-based resources, acquisition and maintenance of financial and non-cash benefits, engagement with medical providers, crisis management and de-escalation, education, life skills, etc.
  - ii. **Resident Service Coordinator (RSC)** – provides client-centered, strengths-based housing retention services to all residents to ensure consistency, fairness/equity, swiftness, transparency, and empowerment/inclusion throughout the housing stay. The RSC supports residents, services providers, voucher administrators, and property managers to identify issues that may jeopardize the resident’s housing and ensuring residents receive effective and timely interventions. This position provides on-site support through care coordination, crisis management, education, community engagement, contingency management, and other Tenancy Support Services.
- b. What percentage of hours and benefits will this funding go towards
  - i. Twenty hours per week (50%) for both the Case Management and Resident Service Coordinator positions (24.22% fringe, 18.13% indirect).
- c. Staff to client ratio
  - i. Renaissance Veterans Apartments at Fitzsimons has three full-time, on-site support staff. Residents receive additional services from property management

staff, behavioral health providers, medical providers, Peer Specialists, and supervisory staff. We maintain a staff to client ratio of no greater than 1:15 across our multidisciplinary team.

### **3. Direct client services**

- a. What services will be provided?
  - i. Wrap-around supportive services for the project provided through Case Management, Behavioral Health, Resident Services Coordinator, Housing Navigation, Housing Counseling (voucher administrator), Primary Health Care, Integrated Primary Health Care, Employment Assistance, and Peer Support. Support services focus on accessing housing, ongoing assessment of needs, connection to resources including referrals to health care providers, care coordination, housing retention, and building skills to increase overall health and independence.
  - ii. Homeless Prevention support to mitigate risk of losing housing.
  - iii. Vocational support, assessment, employment referrals, job skills, resume building, and connection to vocational counseling.
  - iv. Supplies for new residents upon leasing including linens, kitchen supplies, hygiene items, trash bins, etc.
  - v. Community engagement focused around the five social determinants of health (Housing Stability, Financial Stability, Education, Community Engagement, and Integrated Health and Wellness)
  - vi. Contingency management provided through the Good Neighbor Incentive Program (household supplies).
- b. What type of financial assistance will be provided to clients?
  - i. Eviction prevention (funding requested through the City of Aurora)
  - ii. Employment support (provided through other funding sources)
  - iii. Basic needs such as food, hygiene (provided through other funding sources)
- c. Conduct needs/risk assessments for all clients to determine goals.
  - i. Residents receive a bio-psychosocial assessment upon entering the program to determine the range and intensity of supportive services needed. An Individualized Service Plan (ISP) is developed and outlines the goals, objectives, and interventions attached to the identified needs (Benefits/Financial Supports,

Case Management, Family/Child, Housing Needs, Mental Health, Physical Health/Wellness, Resource/Service Needs, Substance Use). ISP's are updated every 6 months and Comprehensive Assessments are completed every 12 months.

- ii. Risk Assessment – All supportive service providers conduct risk assessments at program entry and continuously throughout the program stay. All staff are trained in risk assessment and the agency participates in the Zero Suicide initiative, ensuring that staff are trained in best practices around suicide prevention, assessment, and evidence-based practices.
  - iii. Subrecipient is required to perform client intake, a client needs/risk assessment to determine a housing plan.
  - iv. Case manager will conduct Needs/Risk Assessment and goal setting.
- d. What population of clients will you be serving?
- i. The proposed project will exclusively serve Veterans households experiencing or at extreme risk of homelessness, with preference given to Veterans experiencing chronic homelessness.
- e. Assistance Documents (if providing financial assistance to clients please include documentation that agency will be collecting)
- i. The proposed project is requesting funding under Homeless Prevention to assist with mitigating circumstances that pose significant risk to the household maintaining housing. Documents that will be collected are:
    - 1. Current Income Statements
    - 2. W9 From Creditor/Landlord
    - 3. Photo ID
    - 4. Ledger/Eviction Notice
    - 5. Utilities Bill & shutoff notices
    - 6. Lease
    - 7. Client Payment Request form
- f. All program participants must be entered into HMIS.
- i. The proposed project currently utilizes the HMIS program “CCH\_Fitz City of Aurora MJ\_SSO” program.

#### **4. Shelter Operational Costs**

- a. What operational costs will this funding be used for:

- i. None

## 5. Performance Goals

- a. How will you measure your performance?
  - i. **Goal 1:** Facilitate housing stability at Renaissance Veterans Apartments at Fitzsimons and/or facilitate move-outs/exits to permanent housing destinations.
    - 1. **Objective 1.a:** 80% of resident Veterans will maintain housing stability at Fitzsimons.
  - ii. **Goal 2:** Facilitate increased stability through employment support.
    - 1. **Objective 2.a:** 80% of resident Veterans will participate in an Employment Focused service focused on assessing employment skills/needs and vocational support referrals.
  - iii. **Goal 3:** Facilitate increased levels of income or maintenance of existing income levels.
    - 1. **Objective 3.a:** 70% of resident Veterans will increase or maintain their income level documented at intake and through the end of the grant period.
  - iv. **Goal 4:** Facilitate maintenance or acquisition of non-cash benefits.
    - 1. **Objective 4.a:** 77% of resident Veterans will maintain the level of non-cash benefits documented at intake or acquire non-cash benefits, if documentation shows they were receiving none at intake.
  - v. **Goal 5:** Facilitate engagement in community activities.
    - 1. **Objective 5.a:** 60% of resident Veterans will engage in community activities during the grant term.
  - vi. **Goal 6:** Facilitate engagement in needed health care services/treatment, including behavioral health care services/treatment.
    - 1. **Objective 6.a:** From 1/1/2024 to 12/31/2024, at least 60% of all resident Veterans will engage in needed health and/or behavioral health care services/treatment.

Success meeting goals 1, 2, 3, and 4 will be illustrated with HMIS data and HMIS reports documenting achievement of objectives 1.a, 2.a, 3.a, and 4.a.

Success meeting goal 5 will be illustrated with data and reports from a specialized database designed and maintained by CCH's Department of Residential Services. These data and reports will document achievement of objective 5.a.

Success meeting goal 6 will be illustrated with data and reports from two sources: 1) NextGen, CCH's electronic health records system; and 2) medical records available to CCH through partnership and collaboration with the VA Eastern Colorado Health Care System.

Success meeting all projected goals will also be measured by client satisfaction surveys that will be administered at least annually, as well as quarterly focus groups designed to elicit resident feedback on the project and quality of services and resident life.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)



EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Family Tree GOALS
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** n/a

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Family Tree GOALS for \$97,520

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$97,520

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$97,520

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)



**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Family Tree whose principal office street address, 3805 Marshall Street Wheatridge Colorado 80033 hereinafter referred to as the “Subrecipient.” UEI (if applicable): VVSFBGKN61W5. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Ninety-seven Thousand Five Hundred Twenty Dollars and no/100 (U.S. \$97,520.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) **TERM OF PROJECT.** The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) **AGREEMENT.** The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller



15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Family Tree GOALS  
3805 Marshall Street  
Wheat Ridge Colorado 80033

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_





A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

**1. Project Description**

**a. Please provide brief description of your program/project**

Family Tree Generational Opportunities to Achieve Long-term Success (GOALS) utilizes a 2-Gen approach to assist children and families in their journey to find economic empowerment, breaking the cycle of poverty and homelessness and creating opportunities for health and well-being across generations. Each family residing at GOALS has a private room and access to common living areas, bathrooms, and kitchens, offering a safe place to live while they work with Family Tree and community partners to develop long-term goals for stability and economic independence. Residency in the program is up to nine months, depending on unique family needs, with follow-up and support offered for one year after leaving residential programming. With county agencies and nonprofit partners co-located on the GOALS campus, child-focused, adult-focused, and whole-family-focused services are readily accessible so residents can holistically address their families' generational health and well-being, education, social capital, housing, and economic assets to improve health and economic mobility outcomes. In addition, Family Tree conducts VI-SPDATs (Vulnerability Index and Service Prioritization Decision Assistance Tool) on eligible and interested households to determine their vulnerability and risk level for purposes of coordinated entry and housing placement.

The GOALS program offers an innovative strategy for families experiencing homelessness to provide comprehensive services that support them in addressing the root causes contributing to housing instability. With access to safe, stable housing, families across Arapahoe County can better reach their full potential.

The GOALS program can currently house up to 19 families at one time with a variety of room sizes to meet the needs of the families. In May of 2024, we anticipate completing a building renovation that will increase capacity by ten families/rooms. Six of those ten rooms will be dedicated to Aurora families experiencing housing insecurity.

**2. Staffing Cost**

**a. Provide a list of positions and brief descriptions for positions that will be funded**

- i. Navigator: 1 FTE for eight months for GOALS expansion; Works with clients to help them obtain housing, develop 2-Gen goal plans, increase income, secure employment, access community resources, and connect with health services.

**b. What percentage of hours and benefits will this funding go towards**

- i. This 1 FTE will cover a portion of the total 5.5 FTE that is budgeted to cover the GOALS expansion or 15% of the total compensation budget for eight months
- ii. The compensation benefits that Family Tree provides include payroll taxes (FICA, Medicare, FAMLII), employers share of health, dental and vision, retirement plan match, long term disability, unemployment and worker's compensation.

**c. Staff to client ratio**

The caseload for each Navigator is a maximum of 5 families.

**3. Direct client services**

**a. What services will be provided**

GOALS will provide essential services including case management, employment assistance and job training, and referrals to outpatient health services, legal services, life skills training, mental health services, and substance abuse treatment services. Case management includes supporting clients through housing navigation, resource connections, education and employment guidance, and links to obtaining mental health or substance misuse services. Clients typically work with case managers for about four months, including an average of at least 10 meetings. GOALS residents are given priority for the on-campus early childhood education center operated by Ability Connection Colorado with spaces for 70 children between 6 weeks to 5 years of age.

**b. What type of financial assistance will be provided to clients**

Direct financial assistance will not be provided to clients through this funding.

**c. Conduct needs/risk assessments for all clients to determine goals**

Family Tree’s Client Support Tool is used to assess the strengths and needs of clients when they enter the GOALS program, their household goals, and the change experienced while receiving Family Tree services. Data from the tool is used to inform client support/services, provide context to inform coaching and goal setting, and help capture the impact of Family Tree, namely client/family movement toward, and level of, stability. The Client Support Tool is structured as a coaching tool and is designed to be delivered using a client-driven, solutions-oriented, strengths-based approach. Using a scale of 1-4, where 1 represents unstable and 4 represents stability, case managers work with GOALS clients to determine where they fall on the scale across multiple domains and to establish personalized goals that help increase their stability. Case managers utilize evidence-based motivational interviewing to move families toward success by helping them determine the necessary action steps to help them achieve their goals.

**d. What population of clients will you be serving**

GOALS serves families experiencing homelessness or at imminent risk of homelessness who have a child under the age of 18 in their custody. During Family Tree’s 2022 – 2023 fiscal year, GOALS served 100 total clients in 29 households, including 37 adults and 63 children. Of the 100 clients served, 50 were City of Aurora residents. More than 75% of households were single parent families, and 69% of those were female-headed households. Nearly 90% of households had annual incomes under \$20,000 upon intake.

Renovations will be completed on an additional residential building for the GOALS program by May 2024. The new building will provide ten more rooms for families experiencing homelessness. Six of the ten new rooms will be dedicated to Aurora residents.

- e. Assistance Documents (if providing financial assistance to clients please include documentation that agency will be collecting)**

Direct financial assistance will not be provided to clients through this funding.

- f. All program participants must be entered into HMIS**

Family Tree utilizes the HMIS database for data entry for all GOALS services and clients.

**4. Shelter Operational Costs**

- a. What operational costs will this funding be used for

n/a

**5. Performance Goals**

- a. How will you measure your performance

Personal and demographic information, is recorded during the intake process, which helps us meet the needs of those in crisis within our community. Progress is evaluated and challenges addressed through monthly reporting of metrics and outcomes, internally. Family Tree designed a report that details all established outcomes specific to each program offered. In measuring our impact, we identified outcomes that document an improved quality of life for each client, including relationship safety, supportive connections, individual and family stability, etc. Family Tree defines and measures the effectiveness of programs not just through the number of people served, but by whether our services have helped clients substantially improve their quality of life.

Family Tree's Client Feedback Survey records client feedback about their experience with Family Tree, and is administered when clients exit a program, or annually if a client is working with us for longer than a year. The survey assesses how Family Tree's approach to our services is perceived by clients and how available services helped them. Our current anticipated outcomes for GOALS include:

- 90% of children in residence will be engaged with school or quality early childhood education services.
- 80% of households exiting the program will move into safe, stable housing.

Analysis of survey data helps Family Tree track progress toward goals and better understand if the impact of our services is sustainable.

During 2024, we anticipate providing approximately 15,500 nights of shelter and supportive services to 115 total individuals (38 families) through GOALS.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)



EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Gateway Domestic Violence Services
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** n/a

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Gateway Domestic Violence for \$115,000

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$115,000

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$115,000

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)



**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Gateway Domestic Violence Services whose principal office street address, PO Box 914 Aurora Colorado 80040 hereinafter referred to as the “Subrecipient.” UEI (if applicable): DEGFU5KJERA4. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed One Hundred Fifteen Thousand Dollars and no/100 (U.S. \$115,000.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) TERM OF PROJECT. The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) AGREEMENT. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller



15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Gateway Domestic Violence Services  
PO Box 914  
Aurora Colorado 80040

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_

## EXHIBIT A

### SCOPE OF SERVICES

#### A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

##### 1. Project description

Gateway is requesting funding to support our Emergency Shelter for victims of domestic violence in Aurora, Colorado. Specifically, funding will be used for case management, personnel and food and supplies.

Our shelters serve as a safe landing place for victims fleeing dangerous situations. Gateway's emergency shelter houses domestic violence victims and their children for up to 30 days. Staff provide for basic needs (access to safe and secure shelter and stable housing) while facilitating access to critical social support systems through case management, housing navigation, referrals, and other supports to help increase self-sufficiency and transition out of shelter. Additionally, program staff provide case management and psycho education about DV, and assist victims with securing vital documents, benefits such as SNAP and TANF.

##### 2. Staffing Cost

###### a. Roles and Descriptions

- i. Full Time Weekend Advocate – Advocates provide case management services to victims of domestic violence and their children including crisis intervention, intake services, individual emotional support, advocacy and crisis line support. Our advocates are adept at handling crisis situations and working with diverse populations.
- ii. Full time Overnight Advocate – Advocates provide case management services to victims of domestic violence and their children including crisis intervention, intake services, individual emotional support, advocacy and crisis line support. Our advocates are adept at handling crisis situations and working with diverse populations.
- iii. Advocates provide case management services to victims of domestic violence and their children including crisis intervention, intake services, individual emotional support, advocacy and crisis line support. Our advocates are adept at handling crisis situations and working with diverse populations.

###### b. Percentage of hours and benefits this funding will go towards

- i. Full time overnight Advocate-100% of hours, salary and benefits
- ii. Fulltime weekend advocate – 100% of hours, salary and benefits
- iii. Full time child/family advocate – 100% of hours, salary and benefits

#### C. Client to Staff Ratio

Until 8 each night, we have at least 2 staff per approximately 20 clients. Overnight, we have 1 staff per approximately 20 clients.

### **3. Direct client services**

- a. Services provided include
  - i. Case Management
  - ii. Crisis intervention
  - iii. Housing Navigation
  - iv. Advocacy and referrals to community resources
  - v. Emotional support
  - vi. Crisis line support
  - vii. Assistance with securing vital documents
- b. Gateway will needs/risk assessments for all clients to determine goals
  - i. Gateway advocates perform client intake, a client needs/risk assessment, conduct an ESG assessment to evaluate housing situation and determine a housing plan, and conduct a MOVERS survey which assesses a clients' knowledge of safety and resources over time.
  - ii. Case managers will conduct Needs/Risk Assessment and goal setting
- c. Population served
  - i. Families who are victims of domestic violence experiencing homelessness
  - ii. Victims of Domestic Violence At risk of homelessness
- d. Assistance Documents
  - i. No documentation is required due to Colorado Domestic Violence Program requirements when entering an emergency DV shelter. Gateway staff do work with clients to gather ID that is needed to move toward securing housing and employment when possible.
- e. All program participants are entered into CAFÉ, an HMIS comparable database.  
Appropriate participants are entered into the OneHome system.

### **4. Performance Goals**

Gateway uses a combination of qualitative and quantitative measures to track performance. Through CAFÉ, our HMIS comparable client management database, we track nights of shelter, how many people served, and how many people exited to permanent housing.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).



EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Mile High Behavioral Healthcare, Aurora Day Resource Center
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** n/a

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

---

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval
- Forwarded Without Recommendation  Minutes Not Available
- Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Mile High Behavioral Healthcare, Aurora Day Resource Center for \$369,078.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact
- Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

American Rescue Plan Act \$369,078

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

\$369,078

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

n/a

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

---

**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT**  
**CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS**  
**ASSISTANCE LISTING NUMBER (formerly CFDA):**  
**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Mile High Behavioral Healthcare Aurora Day Resource Center whose principal office street address, PO Box 919 Aurora Colorado 80040 hereinafter referred to as the “Subrecipient.” UEI (if applicable): Z18RSDC2JHT7. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Three Hundred Sixty-Nine Thousand Seventy-eight Dollars and no/100 (U.S. \$369,078.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) **TERM OF PROJECT.** The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) **AGREEMENT.** The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.



## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

#### 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

#### 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

#### 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

#### 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Mile High Behavioral Healthcare Aurora Day Resource Center  
PO Box 919  
Aurora Colorado 80040

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_

EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

**1. Project Description**

- a. Please provide brief description of your program/project
  - i. The overall goal of the ADRC is to provide guests with safety and security while they obtain the support and tools they need to gain stable employment and permanent housing.

**2. Staffing Cost**

- a. Provide a list of positions and brief descriptions for positions that will be funded
  - i. Program Manager: Oversees daily operations for ADRC. Supervises all shelter staff. Responsible for all funding reports. Use a Trauma Informed lens to help individuals experiencing homelessness find housing.
  - ii. Employment Resource Navigators: Provides support to individuals and families. Help with food preparation. Ensures shelter is clean and prepare for intake of clients daily. Work with various community partners in providing updates.
  - iii. Senior Employment Resource Navigators: Provides support to individuals and families. Help with food preparation. Ensures shelter is clean and prepared for intake of clients daily. Work with various community partners in providing updates.



- iv. Chef: Our chefs work to provide nutrient-dense meals to help individuals sustain while helping support the individuals' immune system. Our two chefs prepare 200,000 meals annually for guests.
- b. What percentage of hours and benefits will this funding go towards
  - i. One FTE Program Manager
  - ii. Four FTE Employment Resource Navigators
  - iii. Two FTE Senior Employment Resource Navigators
  - iv. One FTE Chef
- c. Staff to client ratio
  - i. 30 clients: 1 staff

### **3. Direct client services**

- a. What services will be provided
  - i. As a program of Comitis, the ADRC works to provide a comprehensive approach to bring guests from homelessness to housed. The ADRC is Aurora's only 7 day/week service center for people experiencing homelessness. To start, adults coming to the ADRC have access to basic essential services including 3 meals a day, hygiene items, showers, laundry services, and cold weather clothing. Guests can also receive mail at the ADRC and access computers. The Aurora Day Resource Center provides much more than basic services. Guests have access to mental health services. Mile High Behavioral Healthcare's staff nurse is available for clients and other staff provide HIV and Hepatitis testing. UC Health's School of Nursing also provides physical health care on a regular basis. No Smiles Left Behind provides free dental treatments. The ADRC provides recliners to guests who are unwell or who work nights and need to rest during the day. Women experiencing homelessness often find themselves a distinct minority so the ADRC has set aside a Ladies Lounge where women guests can relax removed from the male guests. ADRC case managers assist clients with setting goals and accessing services. They are often the first step for those who wish to work on their recovery from substance use through the Comitis Opportunities for Recovery Unit. The employment case managers can assist with helping them define their skills, develop a resume, improve their interview skills and even outfit them with clothing for interviews and ultimately for work. They can also recommend them for participation in the Comitis Culinary Workforce Development Program.
- b. What type of financial assistance will be provided to clients
  - i. ADRC does not provide financial assistance to clients
- c. Conduct needs/risk assessments for all clients to determine goals

- i. Subrecipient is required to perform client intake, a client needs/risk assessment to determine a housing plan.
    - ii. Case manager will conduct Needs/Risk Assessment and goal setting
  - d. What population of clients will you be serving
    - i. Individuals Experiencing Homelessness
  - e. Assistance Documents (if providing financial assistance to clients please include documentation that agency will be collecting)
    - i. ADRC does not provide financial assistance to clients
  - f. All program participants must be entered into HMIS

**4. Shelter Operational Costs**

- a. What operational costs will this funding be used for
  - i. Monthly trash pick up costs
  - ii. Monthly Copier cost
  - iii. Supplies for the Day Shelter
  - iv. Monthly cost for telephone
  - v. Emergency Weather Updates

**5. Performance Goals**

- a. How will you measure your performance
  - i. The ADRC tracks outputs in HMIS and will be able to provide numbers of unique individuals served, guest demographics and client-specific data within case management. The Comitiss' data specialist generates quarterly HMIS reports, with the leadership team uses to measure efficacy of program delivery.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.





# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Mile High Behavioral Healthcare, Colfax Community Network
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** N/A

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Mile High Behavioral Healthcare, Colfax Community Network for \$245,000

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$245,000

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$245,000

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Mile High Behavioral Healthcare Colfax Community Center whose principal office street address, PO Box 919 Aurora Colorado 80040 hereinafter referred to as the “Subrecipient.” UEI (if applicable): Z18RSDC2JHT7. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Two-hundred Forty-five Thousand Dollars and no/100 (U.S. \$245,000.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) TERM OF PROJECT. The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) AGREEMENT. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT



Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Mile High Behavioral Healthcare Colfax Community Center  
PO Box 919  
Aurora, Colorado 80040

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_

EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

**1. Project Description**

- a. Please provide brief description of your program/project
  - i. CCN operates under a family preservation model and offers it's services free of charge to clients. They also provide multiple levels of intervention for each family, using a two-generation approach. CCN provides case management for individuals to obtain housing. The CCN case manager also provides employment assistance to help individuals prepare, search for and obtain employment and a computer lab to allow individuals to look for employment and housing and apply for benefit programs.

**2. Staffing Cost**

- a. Provide a list of positions and brief descriptions for positions that will be funded
  - i. Director of HoSt: Oversees general program operation and supervises staff. Develops partnerships within the community. Develops and implements programming centered around play learning to foster an environment of growth.
  - ii. Day Resource for Families Case Manager: Provides case management in housing and employment supports to help families experiencing or at risk of homelessness; assists with HAP Flex funds requests.
  - iii. Community and Family Liaison: Works with schools and families to provide supports for those in unstable housing environments. Manages the food pantry.
  - iv. Program Support: Works with children and youth in the program and supports the Community and Family Liaison.

- b. What percentage of hours and benefits will this funding go towards
  - i. Ten hours/week for Director of HoST
  - ii. One FTE Day Resource for Families Case Manager
  - iii. One FTE Community and Family Liaison
  - iv. One FTE Children's Program Support
- c. Staff to client ratio
  - i. 20 clients: 1 staff

**3. Direct client services**

- a. What services will be provided
  - i. CCN provides tangible support to families that are currently housed but struggling financially through its food pantry, and the family food boxes that are distributed. By providing employment supports CCN assists individuals to obtain or improve their employment situation providing them with greater financial stability. The CCN case manager assists families in accessing supports such as TANF and SNAP benefits. Through its reciprocal arrangements with Comitis, CCN is able to refer people and families, providing them with immediate shelter.
- b. What type of financial assistance will be provided to clients
  - i. CCN does not provide financial assistance to clients
- c. Conduct needs/risk assessments for all clients to determine goals
  - i. Subrecipient is required to perform client intake, a client needs/risk assessment to determine a housing plan.
  - ii. Case manager will conduct Needs/Risk Assessment and goal setting
- d. What population of clients will you be serving
  - i. Individuals and Families Experiencing or At Risk Of Homelessness
- e. Assistance Documents (if providing financial assistance to clients please include documentation that agency will be collecting)
  - i. CCN does not provide financial assistance to clients
- f. All program participants must be entered into HMIS

**4. Shelter Operational Costs**

- a. What operational costs will this funding be used for
  - i. Staff Development including monthly background checks and training
  - ii. Supplies for program and cleaning

iii. Monthly cost for Resume Building support

**5. Performance Goals**

a. How will you measure your performance

i. CCN is currently participating in HMIS tracking. All information on case management activities will be tracked through HMIS. Services provided through the Family Resource Center are tracked weekly in an Excel spreadsheet. The children's outcomes are tracked through the EPIC.



EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Mile High Behavioral Healthcare, Comitis Crisis Center
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** n/a

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Mile High Behavioral Healthcare for \$354,800

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$354,800

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$354,800

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**



Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Mile High Behavioral Healthcare Comitis Crisis Center whose principal office street address, PO Box 919 Aurora Colorado 80040 hereinafter referred to as the “Subrecipient.” UEI (if applicable): Z18RSDC2JHT7. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Three Hundred Fifty-four Thousand Eight Hundred Dollars and no/100 (U.S. \$354,800.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) TERM OF PROJECT. The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) AGREEMENT. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS



(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Mile High Behavioral HealthCare Comitis Crisis Center  
PO Box 919  
Aurora Colorado 80040

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_

EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

**1. Project Description**

a. Please provide brief description of your program/project

- i. Comitis seeks to provide a comprehensive approach to bring guests from homelessness to housed. This includes coordinating services in the same location to encourage guests to participate in those services. As the most comprehensive provider of services for people experiencing homelessness in Aurora, Comitis is also the most available and accessible for law enforcement. Anytime that the Aurora Police Department (APD) encounters someone needing services for homelessness, they can connect them with Comitis rather than spending valuable APD time and resources searching for services from other providers. This extensive level of availability and accessibility, combines with daily communication with PAR officers and ongoing partnerships, ensures that Comitis services are structured to support APD's ability to provide for the safety of the public regardless of the time or day of the week.

**2. Staffing Cost**

a. Provide a list of positions and brief descriptions for positions that will be funded

- i. Shelter Program Manager: Oversees daily operations for Comitis. Supervises all shelter staff. Responsible for all funding reports. Use a Trauma-informed lens to help individuals experiencing homelessness find housing.

- ii. Day Care Navigators: Provides support to individuals and families. Help with food preparation. Ensures shelter is clean and prepared for intake of clients daily. Work with various community partners in providing updates.
  - iii. Senior Care Navigators: Provides support to individuals and families. Help with food preparation. Ensures shelter is clean and prepared for intake of clients daily. Work with various community partners in providing updates.
  - iv. Intake Care Navigators: Check guests into the emergency shelter. Provide essential need items such as toiletries, bedding, and meals/snacks. Ensures the milieu is calm by using a trauma-informed approach.
  - v. Overnight Care Navigators: Provides safety and security to guests during overnight hours. Start preparation for shelter operation for the following day.
  - vi. Group Living Supervisor: Supervise and support care navigators. Assist guests with grievances and expectations. Support with collections of donations, volunteers, and public tours, and ensure routine building maintenance is completed.
  - vii. Lead Chef: Our chefs work to provide nutrient-dense meals to help individuals sustain while helping support the individuals' immune system. Our two chefs prepare 200,000 meals annually for guests.
- b. What percentage of hours and benefits will this funding go towards
- i. One FTE Shelter Program Manager
  - ii. One FTE Day Care Navigator
  - iii. One FTE Senior Care Navigator
  - iv. Two FTE Intake Care Navigators
  - v. Two FTE Overnight Care Navigators
  - vi. One FTE Group Living Supervisor
  - vii. Twenty hours/week for FTE Group Living Supervisor
  - viii. Ten hours/week for FTE Lead Chef
- c. Staff to client ratio
- i. 30 clients: 1 Staff

### **3. Direct client services**

- a. What services will be provided

- i. Comitis services include a **30-day emergency shelter** for adults and families. This length of stay enables them to stabilize and connect to housing case management. The adult shelter may house up to 40 individuals a night and the family shelter another 30. Comitis will also provide **medical respite shelter** to people discharged and referred from UCHHealth who need follow-up care for up to five days. A registered nurse is available on staff for any questions. Comitis will provide **transitional housing** to TANF families from Arapahoe and Adams Counties and veterans and their families. Individuals who seek help with substance use may apply for the Comitis **Opportunity for Recovery Unit**, where they will receive shelter, treatment and case management while engaged in recovery. Comitis will provide emergency shelter for up to 30 additional individuals during cold-weather activations. Everyone engaged in these services will be provided three meals a day, hygiene supplies and access to laundry services.
- b. What type of financial assistance will be provided to clients
  - i. Comitis does not provide financial assistance to clients
- c. Conduct needs/risk assessments for all clients to determine goals
  - i. Subrecipient is required to perform client intake, a client needs/risk assessment to determine a housing plan.
  - ii. Case manager will conduct Needs/Risk Assessment and goal setting
- d. What population of clients will you be serving
  - i. Individuals and Families Experiencing Homelessness
- e. Assistance Documents (if providing financial assistance to clients please include documentation that agency will be collecting)
  - i. Comitis does not provide financial assistance to clients
- f. All program participants must be entered into HMIS

**4. Shelter Operational Costs**

- a. What operational costs will this funding be used for
  - i. No operational costs are being charged to this funding

**5. Performance Goals**

- a. How will you measure your performance

- i. Comitis tracks outputs in HMIS and will be able to capture total bed-nights and meals provided, guest demographics and client-specific data within case management. Comitis' data specialist generates quarterly HMIS reports, which the leadership team uses to measure efficacy of program delivery.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)



EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement Restoration Christian Ministries
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** n/a

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** n/a

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for Restoration Christian Ministries for \$25,000

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$25,000

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$25,000

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)



**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and Restoration Christian Ministries whose principal office street address, 15640 E Sixth Avenue Aurora Colorado 80011 hereinafter referred to as the “Subrecipient.” UEI (if applicable): N1GQUK6KLSC8. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments

received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Twenty-five Thousand Dollars and no/100 (U.S. 25,000.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) **TERM OF PROJECT.** The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) **AGREEMENT.** The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller



15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

Restoration Christian Ministries  
15640 E Sixth Avenue  
Aurora Colorado 80011

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_

EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

**1. Project Description**

The RCM Safe Outdoor Space program, utilizing Pallet shelters, is a 24/7 non-congregate shelter hosted by Restoration Christian Ministries (RCM) and operated in partnership with the Salvation Army.

**2. Direct client services**

Services provided. Restoration Christian Ministries will provide ongoing services to run a Safe Space for Aurora's unhoused community members. Safe spaces allow unhoused neighbors to have a housing first, resource rich secure environment. The safe space model ensures access to basic human needs, as well as resources and services that allow for each for each individual, couple, or family to move toward stability within their own community.

- a. RCM will not provide financial assistance to clients participating in the SOS program. Any such assistance will be provided by the Salvation Army.
- b. RCM will continue collaboration with the Salvation Army to provide best practice program services and to conduct needs/risk assessments for all clients to meet the program's goals and objectives.
- c. Population served:
  - i. Individuals or couples experiencing homelessness
  - ii. Individuals or couples at risk of experiencing homelessness
- d. Assistance Documents will be collected and maintained by the Salvation Army as part of program operations.
- e. All program participants will be entered into HMIS

**3. Shelter Operational Costs**

- a. Utility payments for water and electricity for 24/7 shelter and shower facilities
- b. Rent and utilities for on-site service provider case management and program support space.

**4. Performance Goals**

- a. RCM will continue to collaborate with the Salvation Army to measure our performance based on length of stay, and percentage of exits to permanent housing.



EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.



(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement The Salvation Army Chambers Safe Outdoor Space
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> n/a
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for The Salvation Army Chambers Safe Outdoor Space for \$35,000

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act- \$35,000

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$35,000

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and The Salvation Army Chambers Safe Outdoor Space whose principal office street address, 1370 Pennsylvania Street Denver Colorado 80203 hereinafter referred to as the “Subrecipient.” UEI (if applicable): RTJFNMKT9DM5. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments



received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Thirty-five Thousand Dollars and no/100 (U.S. \$35,000.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) TERM OF PROJECT. The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) AGREEMENT. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

The Salvation Army Chambers Safe Outdoor Space  
1370 Pennsylvania Street  
Denver Colorado 80203

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_



EXHIBIT A  
SCOPE OF SERVICES

A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

**1. Project Description**

**a. Please provide brief description of your program/project**

The Salvation Army (TSA) respectfully requests \$500,000 to support the general operations of a Safe Outdoor Space (SOS) located in Aurora. This SOS, referred to as Chambers SOS, located at Restoration Christian Fellowship (15660 E 6<sup>th</sup> Avenue, Aurora 801011) began operation in December 2021 due to the success of the Peoria SOS. The program has 56 Pallet Shelters (see palletshelter.com) that can house up to two individuals per shelter.

The objective of the SOS site is to shelter the unhoused while utilizing comprehensive case management and community partnerships to end their homelessness. SOS case managers work with clients to identify their strengths and barriers to housing, assist them in increasing their income, provide community resource referrals, and conduct targeted case management on site. SOS clients can work with housing and employment navigators. Following the Housing First model, case managers utilize progressive engagement which is a strategy of providing as light a touch as possible with financial and supportive services to reduce dependency on the homeless system and foster a quick end to homelessness. Case managers also use critical time intervention, harm reduction, and trauma-informed care in addition to the services provided by Aurora Mental Health Center and STRIDE. SOS's partner, Key Bank, offers free financial education courses and banking services to strengthen the outcomes of individuals gaining employment.

The SOS model is gaining acceptance and has been moderately successful within greater Denver. The SOS program has created an environment for unhoused individuals to experience safety, consistency, and beneficial relationships with both peers and Salvation Army team members. The privacy which residents experience, in conjunction with accessible resources, has proven to be a model that encourages progress and success. In 2022, this SOS placed 15 clients in stable housing; sheltered 95 individuals; connected 37 individuals with employment resources; assisted 78 individuals in retrieving vital documents, and linked 56 clients to benefits. From 1/1/23 through 8/31/23 this SOS placed 23 clients in stable housing; sheltered 128 individuals; connected 19 individuals with employment resources; assisted 58 individuals in retrieving vital documents; and linked 71 clients to benefits.

**2. Staffing Cost**

**a. Provide a list of positions and brief descriptions for positions that will be funded**

*Case Managers (2)* – Case managers at the SOS site are responsible for working with clients to identify needs, strengths and barriers, establish client-centered, goal-oriented case plans, connect clients with available community resources, and ultimately obtain permanent housing.

*Shelter Assistants (1)* – Shelter assistants are responsible for supporting daily site operations including walkthroughs, resource stocking and inventory, meal service, cleaning, service scheduling/administration as needed, and for providing staff coverage outside of traditional business hours.

**b. What percentage of hours and benefits will this funding go towards**

*Case Managers (2)* –

- 100% of one case manager’s hours and benefits will be funded under this proposal.
- 50% of a second case manager’s hours and benefits will be funded under this proposal.

*Shelter Assistants (1)* – 100% of shelter assistant hours and benefits will be funded under this proposal.

For additional shelter staff, including 1 remaining case manager, 9 remaining shelter assistants, and 50% of Peoria/Chambers overnight supervisor, The Salvation Army will work independently and with the city of Aurora to identify alternative funding sources.

**c. Staff to client ratio**

TSA’s Safe Outdoor Space (SOS) consists of 56 pallet shelters with a maximum capacity of 112 individuals. However, in accordance with the trauma informed approach to shelter, individuals are not required to share a shelter, meaning that the typical capacity is approximately 78 individuals.

The SOS site employs three case managers, for a typical caseload of 26-37 clients per case manager. The SOS also employs 10 shelter assistants who provide staff coverage around the clock. Outside of business hours, SOS keeps 2-3 staff on site to maintain a staff to client ratio ranging from 1:26 to 1:56.

**3. Direct client services**

**a. What services will be provided**

Beyond providing an essential alternative to shelter for individuals who experience a wide range of barriers in accessing traditional shelter, TSA’s SOS site provides three daily meals, showers, case management and housing navigation, access to physical and mental health care, and employment support. Services including showers, touch and go case management, and resource referrals are available to people not residing within the SOS site as well.

As a program following the Housing First model, TSA’s SOS case management is low-barrier and housing focused. This means that services provided by case managers are specifically to make shelter accessible and remove barriers to housing stability. Services are accessible to individuals with disabilities, couples, and individuals with pets. There are no curfews. Support includes help obtaining vital documents like IDs and Social Security Cards, as well as assistance in applying for benefits like SNAP or disability – a process that is notoriously difficult, especially for individuals who lack consistent access to technology and may lack technological literacy. Case managers also regularly provide clients with rides to housing or health related appointments using TSA vehicles.

In addition to receiving transportation, site guests also benefit from community partners who, through relationships with The Salvation Army, are able to offer on-site services. This includes a mobile dentist unit, Aurora Mental Health, Stride Clinic, and a mobile veterinary clinic. Starting in 2023, site guests also have access to TSA’s new in-house Employment Pathways program, which offers job training and career support.

In kind services available to clients using flexible, unrestricted funding include transportation assistance, needed supplies/clothing for work, furniture and supplies for when a client obtains housing.

**b. What type of financial assistance will be provided to clients**

When funding is available, TSA's SOS site is able to provide limited financial assistance with application fees, housing security deposits, first month's rent, one month of utility assistance, and in some cases, eviction prevention assistance for former clients. These funds can expedite the housing process for individuals/couples.

**c. Conduct needs/risk assessments for all clients to determine goals**

**i. Subrecipient is required to perform client intake, a client needs/risk assessment to determine a housing plan.**

TSA's SOS site uses a standardized intake and orientation process which involves completing two assessments provided by the region's Continuum of Care:

- **HMIS Intake** – The HMIS Intake is used to confirm client eligibility by establishing homelessness in accordance with HUD definitions, and collect basic information about a client's background, income information, etc.
- **VI-SPDAT** – The VI-SPDAT is an assessment tool used to establish an individual's level of need regarding housing resources by considering their past experiences of homelessness and co-existing conditions including disability, addiction, domestic violence, household makeup, etc. This information is then used to match the client with the appropriate CoC housing resource.

**ii. Case manager will conduct Needs/Risk Assessment and goal setting**

After conducting the above-described intake and assessment process, case managers begin a goal setting process with site guests. This process is client-centered and begins by defining what success looks like to each individual. While the goal of the program is always for clients to exit to permanent housing, TSA recognizes that clients who have experienced extended periods of unsheltered homelessness may require a variety of housing solutions. As a result, common goals for SOS guests include housing/shelter goals like family reunification, building enough trust to enter traditional shelter, or entering a sober living program. Non-housing related goals include ending a feeling of isolation, obtaining employment or increasing income in some way, obtaining essential documents, etc. All goals, however, ultimately focus on increasing stability to move the client closer to housing.

A case manager works with each client to define what a realistic goal may be for them, and breaks down large goals into small, accomplishable steps. The case manager then works to assist the client to achieve these goals through an approach that relies on the strengths of the client and creating a supportive network of resources around them as needed.

**d. What population of clients will you be serving**

TSA's SOS site serves all individuals experiencing unsheltered homelessness with the exception of minors. It allows partners to stay together and allows guests to stay with their pets. Guests at the SOS site are low-income, and often are members of historically marginalized and underserved populations.

**e. Assistance Documents (if providing financial assistance to clients please include documentation that agency will be collecting)**

TSA's SOS site collects the following documents when providing the relevant financial assistance to clients:

- i. Current Income Statements

- ii. W9 From Creditor/Landlord
- iii. Photo ID
- iv. Ledger/Eviction Notice
- v. Utilities Bill
- vi. Lease

**f. All program participants must be entered into HMIS**

As a part of TSA's SOS intake process (as described in response to Question 3.c.i. – Perform client intake), SOS staff complete the HMIS Intake for each program guest. If the individual does not have a profile in HMIS, one is created for them, and if a household is not appropriately grouped, a household is created with all of the household members receiving services. This information is then used to enroll the client into the appropriate Salvation Army program in HMIS (for TSA SOS sites, this includes SAD\_Aurora ESGCV Temp Warehouse Shelter\_ES, SAD\_Aurora Temporary SOS RCM\_ES, and SAD\_Camping Ordinance SOS\_ES).

In addition to entering clients into HMIS, SOS staff also complete an HMIS Release of Information, and complete a VI-SPDAT assessment for clients, which enables them to be matched to the appropriate housing resources in the region's Continuum of Care.

**4. Shelter Operational Costs**

**a. What operational costs will this funding be used for**

Funding will be used to cover the cost of providing three meals a day to shelter guests, at a per capita cost of approximately \$1.5 for breakfast, \$5.25 for lunch, and \$5.25 for dinner. These will be provided through TSA's central kitchen.

**5. Performance Goals**

**a. How will you measure your performance**

Wellsky, TSA's territory-wide database is used to record and track client data. In particular, it is used to track services provided by client, with the ability to attach funds to services for accurate real time allocation of resources. It also empowers case managers working with clients over an extended period of time to create case plans and administer assessments. Wellsky tracking enables staff to monitor client progress, modify programming, discern trends, avert duplication of services, discourage fraud, and collaborate more efficiently with other service agencies.

Using Wellsky data, TSA has the ability to automatically pull macro-level program outcome reports. These reports include duplicated and unduplicated clients both by household and individual counts, as well as client demographic information, geographic information, number and value of services by type, and more.

Additionally, through its use of HMIS, TSA's SOS site is able to use client Intake and Exit data to generate reports about successful outcomes as they relate to exit destinations, income increases, benefit enrollment, and more. The Salvation Army's Denver Metro Social Services department (TSA DMSS) employs a data quality team including a Monitoring and Evaluation Manager who oversees compliance, quality assurance, and an HMIS specialist to ensure that data entered in the HMIS system is accurate and that reports provided are timely. This team supports ongoing training and technical assistance for HMIS users. They coordinate regularly with Program Directors and other supervisory staff to ensure all staff are appropriately training to utilize HMIS and to provide high data quality and help reduce and

eliminate HMIS data errors, and ensure performance is measured as accurately as possible. The TSA DMSS team generates regular reports to determine what adjustments are warranted in the program and budget to ensure goals are being met and that participants are on track to succeed.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.



(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> American Rescue Plan Act Funding Agreement The Salvation Army Peoria Safe Outdoor Space
<b>Item Initiator:</b> Jessica Prosser, Housing and Community Services Director
<b>Staff Source/Legal Source:</b> Emma Knight, Manager of Homelessness, Housing and Community Services/ Tim Joyce, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Sponsor: Alison Coombs, Council Member  
Emma Knight, Manager of Homelessness Behavioral Health, Housing and Community Services / Tim Joyce, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The last Homeless Services Notice of Funding Opportunity was in 2021 and those funds will be finishing up in Dec. 2023. Homelessness staff provided a NOFO update at the 8/3 HORNS meeting. Staff brought forward initial recommendations to 11/27 Council Meeting. The recommendations were approved at the regular Council meeting on 11/27. Item sponsor proposed using one-time American Rescue Plan Act funding to fill gap in funding left from lower marijuana tax revenue.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Due to the decrease in marijuana tax revenue which is used for homeless services. Council Member Coombs is sponsoring this item to fill the gap in funding for The Salvation Army Peoria Safe Outdoor Space for \$14,592

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Revenue Impact | <input checked="" type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact           | <input type="checkbox"/> No Fiscal Impact                       |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

American Rescue Plan Act \$14,592

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

\$14,592

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

n/a

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

n/a

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**QUESTIONS FOR COUNCIL**

Does Council wish to support this item and move it forward?

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**LEGAL COMMENTS**

ARPA funds may be used for programs that increase long-term housing security. (31 CFR § 35.6(b)(3)(A)(5)) ARPA funds may be used for behavioral health care including prevention, treatment, long-term recovery, and behavioral health facilities and equipment. (31 CFR § 35.6(b)(3)(i)(C)) (TJoyce)

**SUBRECIPIENT AGREEMENT  
CORONAVIRUS STATE FISCAL RECOVERY - ARPA FUNDS  
ASSISTANCE LISTING NUMBER (formerly CFDA):**

**FAIM:**

THIS SUBRECIPIENT AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the City of Aurora, Colorado, a Colorado municipal corporation, hereinafter referred to as the “City” and The Salvation Army Peoria Safe Outdoor Space whose principal office street address, 1370 Pennsylvania Street Denver Colorado 80203 hereinafter referred to as the “Subrecipient.” UEI (if applicable): RTJFNMKT9DM5. City and Subrecipient are sometimes each referred to as a “Party” and collectively “Parties.”

**RECITALS**

WHEREAS, on March 11, 2021, President Biden signed the U.S. Senate-amended H.R. 1319 (P.L. 117-2) known as the American Rescue Plan Act (hereinafter “ARPA”); and

WHEREAS, In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes; and

WHEREAS, on May 10, 2021, the U.S. Treasury issued the Interim Final Rule to implement ARPA in Title 31, Part 35 of the Code of Federal Regulations (“CFR”); and

WHEREAS, under ARPA Section 603 (c)(1)(A) and (3) and the Interim Final Rule 35.6(b)(3)(I)(A) recipients may use Coronavirus Local Fiscal Recovery (“CLFR”) Funds to award grants to nonprofit organizations that are responding to the negative economic impacts of the COVID-19 public health emergency; and

WHEREAS, under ARPA Section 603 (c)(1)(A) and the Interim Final Rule 35.6(b)(3)(ii)(A)(11) recipients may provide CLFR Funds to programs or services to disproportionately impacted communities; and

WHEREAS, the City desires to disburse funds from Project No. CI-2113 to the Subrecipient to administer the Project and perform certain services in connection therewith as set forth in this Agreement and in the Scope of Services attached hereto; and

WHEREAS, Subrecipient has represented to the City that is duly qualified, eligible and willing to undertake the Project and provide the services identified herein and in the Scope of Services attached hereto.

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of the terms and conditions set forth herein, the Parties hereto mutually agree as follows:

1. SCOPE OF SERVICES

Subrecipient agrees to satisfactorily perform and complete all services and items of work, and furnish all labor and materials encompassed within or reasonably necessary to accomplish the tasks and functions described in the Scope of Services attached hereto as Exhibit “A” and incorporated herein by reference, in full compliance with all provisions of this Agreement (“Project”)

Administrative Costs as defined in 24 CFR 576.108 are not an eligible reimbursable cost offered to subrecipients.

This award is not for Research and Development.

## 2. EFFECTIVE DATE AND TIME OF PERFORMANCE

(a) EFFECTIVE DATE. Subrecipient shall perform services under this Agreement beginning on January 1, 2024.

(b) TIME OF PERFORMANCE. The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025 unless sooner terminated as provided in this Agreement.

## 3. BUDGET AND METHOD OF PAYMENT

(a) City will pay to Subrecipient an amount up to that specified in subparagraph (c) of this paragraph as full compensation for all services and work to be performed or undertaken by Subrecipient under this Agreement. Payment of funds to Subrecipient is subject to all of the following requirements, which shall be conditions precedent to payment:

- (i) That Subrecipient has expended funds for eligible approved expenditures;
- (ii) That Subrecipient is not in default of any material provision of this Agreement nor applicable law or regulation;
- (iii) That Subrecipient has timely submitted requests for payment or reimbursement detailing the eligible payment or reimbursement items in a format approved by City; and
- (iv) That Subrecipient has certified with each payment or reimbursement request compliance with the requirements identified in Exhibit “C” and that all expenditures for which reimbursement is sought were made for and in furtherance of the approved Project and are an eligible use of federal assistance under ARPA and federal regulations.

(b) Payment hereunder is also subject to and may only be disbursed in accordance with applicable Federal regulations including but not limited to those at 31 CFR Part 35, as presently promulgated and as same may be revised from time to time in the future, all other terms of this Agreement, and any special provisions in the Scope of Services. All payments



received by Subrecipient hereunder are subject to repayment by Subrecipient as provided in 31 CFR Part 35.

(c) The aggregate of all payments made hereunder shall not exceed Fourteen Thousand Five Hundred Ninety-two Dollars and no/100 (U.S. \$14,592.00).

(d) Upon expiration of the term of this Agreement or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

#### 4. TERM OF PROJECT AND AGREEMENT

(a) **TERM OF PROJECT.** The term of the Project shall be from January 1, 2024, through December 31, 2024, unless this Agreement is sooner terminated as provided by this Agreement. If Subrecipient has unspent ARPA fund on hand as of December 31, 2024 this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025 the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

(b) **AGREEMENT.** The Project will be completed on December 31, 2024, unless sooner terminated as provided in this Agreement. If Subrecipient has unexpended ARPA fund remaining on December 31, 2024, this Agreement will automatically be extended to June 30, 2025. If this Agreement is extended to June 30, 2025, the Project must be completed by June 30, 2025, unless sooner terminated as provided in this Agreement.

#### 5. SUBRECIPIENT RECORDS

Subrecipient shall maintain records as to all services provided, reimbursable expenses incurred in performing the Scope of Services and complete accounting records. Accounting records shall be kept on a generally recognized accounting basis and as requested by any representee of the City. Subrecipient agrees to comply with all applicable uniform administrative requirements described or referenced in 31 CFR 35. The Compliance Provisions attached as Exhibit "B" hereto are made a part of this Agreement and Subrecipient agrees to perform and comply with same. The City, Comptroller General of the United States, the Inspector General of the U.S. Treasury and any of their authorized representatives, shall have the right to inspect and copy, during reasonable business hours, all books, documents, papers and records of the Subrecipient which relate to this Agreement for making an audit or examination. Upon completion of the work and end of the term of this Agreement, the City may require copies of all Subrecipient's financial records relating to this Agreement to be turned over to City.

The Subrecipient, which is a non-federal agency, that expends \$750,000 or more during the Subrecipient's fiscal year, shall have a single audit conducted for that year in accordance with the provisions 2 CFR 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", "Super Circular", Audit shall be completed within nine (9) months of the Subrecipients audit period and a copy of the most recent audit shall be forwarded to the City within thirty (30) days of completion.

## 6. MONITORING AND EVALUATION

City shall have the right to monitor and evaluate the progress and performance of Subrecipient to assure that the terms of this Agreement are being satisfactorily fulfilled in accordance with City's and other applicable monitoring and evaluation criteria and standards. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions, and contact Subrecipient as necessary. Subrecipient shall furnish City quarterly program and financial reports of its activities in such form and manner as may be requested by the City. Subrecipient shall fully cooperate with the City in relation to monitoring and evaluation. City may at least quarterly review Subrecipient's performance using on-site visits, progress reports required to be submitted by Subrecipient, audit findings, disbursements transactions and contact with the Subrecipient as necessary.

## 7. PERFORMANCE REPORTING

Subrecipient shall furnish to City quarterly program and financial reports of its eligible activities, information on contracts and subawards information on contracts over \$50,000.00, types of projects funded and other information regarding a subrecipient's utilization of the award funds in such form and manner as may be requested by the City. Quarterly reports are due by the 9<sup>th</sup> day of the first month following the end of a quarter. Subrecipients shall fully cooperate with City in relation to such monitoring and evaluation.

Homeless management Information System (HMIS) The Homeless Management Information System ("HMIS") is the information system designated by the CoC to comply with HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to the homeless individuals and families and persons at risk of homelessness. Domestic Violence Programs are exempt from HMIS and utilize a comparable data base.

a. Records HMIS. According to the March 2010 HMIS Data Standards, a bed or service is considered participating in HMIS "if the provider program makes a reasonable effort to record all universal data elements on all clients service in that bed (or service) and discloses that information through agreed upon means to a HMIS Lead Agency at least once annually." For domestic violence agencies a comparable data base should be utilized.

b. Service Provider is responsible for providing appropriate and timely HMIS training for staff.

c. Service Provider (or Subrecipient) shall keep accurate books and records as indicated below:

- Name, social security number, date of birth, race, ethnicity, gender, veteran status, disabling condition, residence prior to program entry, zip of last permanent address, housing status, program entry date, program exit date, personal identifying number, household identification number, income and cash benefits,

dates of contact, dates of program engagement, destination (helps to measure housing outcomes), description of the beneficiaries of the project – (such as mentally ill, runaway youth, battered spouse), residential services, non-residential services, shelter type;

- Number of participants in each Service Provider’s project (i.e. average number served daily and yearly);
- Types of services or housing assistance provided by Service Provider; number of meals served, additional services offered (and numbers utilizing those services), number of shelter nights provided (if applicable);
- Service Provider shall maintain compliance with MDHI’s HMIS Agency Data Sharing Agreements;
- Service Provider shall enter data in a timely manner into the HMIS data system, within 2 days of client contact.

## 8. SUBRECIPIENT FILES AND INFORMATION REPORTS

Subrecipient shall maintain files containing information which shall clearly document all activities performed in conjunction with this Agreement, including, but not limited to, financial transactions, conformance with assurances and activity reports. These records shall be retained by Subrecipient for a period of three years after the completion of the Project.

Subrecipient shall keep accurate books and records of accounts in accordance with generally accepted accounting principles of all expenditures made and all costs and liabilities incurred utilizing Program Funds. The aforementioned accounts and all project records shall be made available upon request by the City or any other federal agency for examination and audit. All books and records of accounts must be retained for four (4) years from the date of this agreement.

## 9. ASSIGNABILITY

This Agreement shall not be assigned or transferred by the Subrecipient without the prior written consent of the City. Any assignment or attempted assignment made in violation of this provision shall, at the City’s election, be deemed void and of no effect whatsoever.

## 10. AVOIDANCE OF CONFLICT OF INTEREST

Subrecipient certifies and warrants that neither it nor any members of its Board of Directors, officers or employees has or will derive any personal or financial interest or benefit from the activity or activities assisted pursuant to this Agreement, nor has an interest in any contract, subcontract or agreement with respect thereunto, nor the proceeds thereunder, either for themselves or for those with whom they have family or business ties, during their tenure and for one year thereafter. Subrecipient shall avoid all conflicts of interest which are prohibited by applicable federal regulations including but not limited to those set forth in 31 CFR Part 35 as presently promulgated and as same may be revised from time to time in the future.

## 11. INDEPENDENCE OF SUBRECIPIENT

Nothing herein contained nor the relationship of Subrecipient to City, which relationship is expressly declared to be that of an independent contractor, shall make or be construed to make Subrecipient or any of Subrecipient's agents or employees the agents or employees of the City. Subrecipient shall be solely and entirely responsible for its acts and the acts of its agents, employees and subcontractors.

## 12. INDEMNIFICATION. LEGAL DISCLAIMER

Subrecipient and any and all of its personnel operating under the terms of this agreement are not to be considered agents or employees of the City for any purpose and are not entitled to any of the benefits that the City provides for the City's employees. Subrecipient covenants and agrees to, and does hereby, indemnify and hold harmless, to the extent permitted by law, defend the City, its agents, servants, or employees, from and against any and all claims for injuries or damages to persons or property of whatsoever kind of character, whether real or asserted, arising out of this agreement for the work to be performed hereunder. The Subrecipient hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property of whatsoever kind or character, whether real or asserted, arising out of the performance.

Pursuant to Colorado Constitution Article XI, Sections 1 and 2 the City shall not indemnify or hold harmless Grantee, or any party related or operating under this Agreement with or without the City's consent. No provision in this Agreement shall limit or set the amount of damages available to the City to any amount other than the actual direct and indirect damages to the City, regardless of the theory or basis for such damages. Any provision included or incorporated herein by reference which purports to negate this provision in whole or in part shall not be valid or enforceable or available in any action at law or equity, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by this provision shall not invalidate the remainder of the Agreement.

## 13. TERMINATION OF AGREEMENT

(a) For Cause: This Agreement may be terminated by City for cause, including any nonperformance by the Subrecipient, upon ten (10) days written notice to Subrecipient including a statement of the reasons therefore, and after an opportunity for a hearing has been afforded. If a hearing is requested, it shall be held before the City's Mayor whose decision shall be final. The determination of the City as to the cause of termination and the appropriateness thereof shall be final and binding upon both City and Subrecipient. Cause for termination shall include:

- Improper use of funds;
- Failure to comply with the terms and conditions of this Agreement;
- Failure to comply with the terms and conditions of the Scope of Services, Exhibit A;
- If, for any reason, this Agreement's performance is rendered impossible or unfeasible;
- Failure to comply with applicable Federal, State, or local laws and regulations.

(b) Effect for Termination for Cause. If this Agreement is terminated by the City for cause the Subrecipient shall return to the City the entire amount awarded to the Subrecipient pursuant to this Agreement.

(c) For Convenience: This Agreement may be terminated by City for convenience upon ten (10) days written notice to Subrecipient, which decision shall not be subject to appeal.

(d) Post Expiration and Termination Procedures: Upon expiration or in the event of a prior termination, all remaining and unspent grant funds, shall immediately become the sole and separate property of the City and the Subrecipient shall perform all acts and execute all instruments necessary to transfer and assign such funds to the City. All finished or unfinished documents, data, studies, reports, and work product prepared by the Subrecipient under this Agreement or with grant funds shall, at the option of the City, become City's property.

#### 14. LIABILITY

As to the City, Subrecipient agrees to assume the risk of all personal injury, including death and bodily injury, and damage to and destruction of property, including loss of use therefrom, caused by or sustained, in whole or in part, in conjunction with or arising out of the performance or nonperformance of this Agreement by Subrecipient or by the conditions created thereby. Subrecipient further agrees to indemnify and save harmless the City, its officers, agents and employees, from and against all claims, liabilities, costs, expenses, penalties and attorney fees arising from such injuries to persons or damages to property or based upon or arising out of the performance or nonperformance of this Agreement by Subrecipient or out of any violation by Subrecipient of any statute, ordinance, rule or regulation. Subrecipient shall be responsible for any injury to persons or damage to property to the extent arising from negligent or otherwise wrongful acts, errors and omissions of Artist, its agents, and employees.

#### 15. INSURANCE

If Subrecipient and any sub-contractor of Subrecipient have employees Subrecipient and the sub-contractor(s) shall provide the appropriate certificates of insurance and Worker Compensation documents, at no cost to the City, as described in Exhibit "D". Subrecipient further agrees and understands that it, and any sub-contractor are to maintain and keep in force the appropriate insurance certificates throughout the term of this Agreement.

#### 16. CERTIFICATIONS

Subrecipient agrees to execute and abide by the certifications contained in Exhibit "C" hereto, and Subrecipient's application for ARPA funds, both of which are hereby made a part of this Agreement. In the event of any conflict between the terms of this Agreement and Subrecipient's Application, this Agreement shall control.

#### 17. REVERSION OF ASSETS

(a) Upon expiration of the term of this Agreement, or upon any prior termination, Subrecipient shall transfer to City any funds provided hereunder which are on hand at the time of expiration or termination.

(b) In the event City incurs any costs or expenses in enforcing the requirements of this paragraph or in bringing any action to recover the property or amount of any repayment obligation, City shall be entitled to recover its costs and expenses, including reasonable attorney's fees.

## 18. RESPONSIBILITIES OF SUBRECIPIENT

Subrecipient warrants and represents that it:

- (a) Has the requisite authority and capacity to perform all terms and conditions on Subrecipient's part to be performed hereunder;
- (b) That it is duly organized as a non-profit organization under state law and is in good standing with the Secretary of State of Colorado;
- (c) That it is a nonprofit organization exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (d) That it is fully aware of and understands its duty to perform all functions and services in accordance with the regulatory requirements of 31 CFR Part 35 and those identified in Exhibit "C" hereto;
- (e) That it is accepting federal financial assistance hereunder subject to certain mandatory repayment provisions; and

## 19. RESPONSIBILITIES OF THE CITY

- (a) City shall provide Subrecipient with the information necessary to facilitate the performance of this Agreement;
- (b) Give prompt notice to Subrecipient when the City becomes aware or observes of any deficiencies or discrepancies in the services provided.

## 20. ENTIRE AGREEMENT; AMENDMENTS

The provisions set forth in this Agreement, and all Exhibits and attachments to this Agreement, constitute the entire and complete agreement of the parties hereto and supersede all prior written and oral agreements, understandings or representations related thereto. No amendment or modification of this Agreement, and no waiver of any provisions of this Agreement shall be binding unless made in writing and executed by the duly authorized officers of both the Subrecipient and City.

## 21. NOTICES

Notices, as referred to in this Agreement, shall be sent to:

City: City of Aurora, Colorado  
Attn: Controller

15151 East Alameda Parkway  
Aurora, Colorado 80012

With a copy to:

Office of the City Attorney  
15151 East Alameda Parkway  
Aurora, Colorado 80012

Subrecipient: :

The Salvation Army Peoria Safe Outdoor Space  
1370 Pennsylvania Street  
Denver Colorado 80203

## 22. LOBBYING.

Subrecipient certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subrecipient shall complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Subrecipient shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements and that all referenced shall certify and disclose accordingly.

## 23. EQUAL EMPLOYMENT OPPORTUNITY/NONDISCRIMINATION.

Subrecipient shall not discriminate against any employee, applicant for employment, contractor, or subcontractor because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient shall adhere to acceptable affirmative action guidelines in selecting employees and contractors and shall ensure that employees and contractors receive fair treatment during employment or agreement, without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Subrecipient shall not discriminate because of race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status in Subrecipient services, activities, accommodations, or facility use. The Subrecipient shall adhere to and assure that employment and activity programming are conducted such that all individuals and groups, clients, participants, and/or employees will be treated equally without regard to their race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status. The Subrecipient understands and agrees that any act of discrimination based upon race, color, religion, sex, national origin, disability, pregnancy, age, bankruptcy or bad debts, genetic information, or veteran status may jeopardize grant funding to the Subrecipient and may be subject to loss of funding, reimbursement of funds allocated, or denial of future funds.

16. SIGNATURES

The persons signing this Agreement on behalf of Subrecipient represent and warrant that such persons and Subrecipient have the requisite power and authority to enter, execute and deliver this Agreement and that this Agreement is a valid and legally binding obligation of Subrecipient enforceable against Subrecipient in accordance with its terms.

IN WITNESS, WHEREOF, the Subrecipient and the City have executed this Agreement as of the date first above written and under the laws of the State of Colorado.

**CITY OF AURORA, COLORADO**

\_\_\_\_\_  
Roberto Venegas, Deputy City Manager

\_\_\_\_\_  
Jessica Prosser, Director Housing and Community Services

\_\_\_\_\_  
Emma Knight, Manager of Homelessness

APPROVED AS TO FORM:

\_\_\_\_\_  
Tim Joyce, Assistant City Attorney

**SUBRECIPIENT**

\_\_\_\_\_



## EXHIBIT A

### SCOPE OF SERVICES

#### A. Principal Tasks

Subrecipient will be responsible for administering the Project for homeless, low-income individuals, who are experiencing housing insecurity. Subrecipient will administer all tasks encompassed in the aforesaid Project in compliance with all applicable federal, state and local rules and regulations governing the Project, in a manner satisfactory to the City.

The principal tasks of Subrecipient include:

##### **1. Project Description**

###### **a. Please provide brief description of your program/project**

The Salvation Army (TSA) respectfully requests \$500,000 to support the general operations of a Safe Outdoor Space (SOS) in Aurora. This SOS, located at TSA's Warehouse (on Peoria and 33rd) began operation in July 2021 as a 90-day temporary camping space for individuals and couples experiencing homelessness. Due to the success of the pilot project, the SOS is now a permanent program. The program has 40 Pallet Shelters (see palletshelter.com) that can house up to two individuals per shelter.

The objective of the Peoria SOS site is to shelter the unhoused while utilizing comprehensive case management and community partnerships to end their homelessness. SOS case managers work with clients to identify their strengths and barriers to housing, assist them in increasing their income, provide community resource referrals, and conduct targeted case management on site. SOS clients can work with housing and employment navigators. Following the Housing First model, case managers utilize progressive engagement which is a strategy of providing as light a touch as possible with financial and supportive services to reduce dependency on the homeless system and foster a quick end to homelessness. Case managers also use critical time intervention, harm reduction, and trauma-informed care in addition to the services provided by Aurora Mental Health Center and STRIDE. SOS's partner, Key Bank, offers free financial education courses and banking services to strengthen the outcomes of individuals gaining employment.

The SOS model is gaining acceptance and has been moderately successful within greater Denver. The SOS program has created an environment for unhoused individuals to experience safety, consistency, and beneficial relationships with both peers and Salvation Army team members. The privacy which residents experience, in conjunction with accessible resources, has proven to be a model that encourages progress and success. In 2022, this SOS placed 28 clients in stable housing; sheltered 77 individuals; connected 87 individuals with employment resources; assisted 102 individuals in retrieving vital documents, and linked 85 clients to benefits. From 1/1/23 through 7/31/23 this SOS placed 27 clients in stable housing; sheltered 30 individuals; connected 24 individuals with employment resources; assisted 46 individuals in retrieving vital documents; and linked 53 clients to benefits.

##### **2. Staffing Cost**

###### **a. Provide a list of positions and brief descriptions for positions that will be funded**

*Case Managers (2)* – Case managers at the SOS site are responsible for working with clients to identify needs, strengths and barriers, establish client-centered, goal-oriented case plans, connect clients with available community resources, and ultimately obtain permanent housing.

*Shelter Assistants (2)* – Shelter assistants are responsible for supporting daily site operations including walkthroughs, resource stocking and inventory, meal service, cleaning, service scheduling/ administration as needed, and for providing staff coverage outside of traditional business hours.

**b. What percentage of hours and benefits will this funding go towards**

*Case Manager (2)* – 100% of case manager hours and benefits will be funded under this proposal.

*Program Assistants (2)* –

- 100% of one shelter assistant’s hours and benefits will be funded under this proposal.
- 44% of a second shelter assistant’s hours and benefits will be funded under this proposal.

For additional shelter staff, including 3 case managers, and 7 remaining shelter assistants, and 50% of Peoria/Chambers overnight supervisor, The Salvation Army will work independently and with the city of Aurora to identify alternative funding sources.

**c. Staff to client ratio**

TSA’s Safe Outdoor Space (SOS) consists of 40 pallet shelters with a maximum capacity of 80 individuals. However, in accordance with the trauma informed approach to shelter, individuals are not required to share a shelter, meaning that the typical capacity is approximately 60-70 individuals.

The SOS site employs three case managers, for a typical caseload of 20-24 clients per case manager. The SOS also employs 9 shelter assistants who provide staff coverage around the clock. Outside of business hours, SOS keeps 2-3 staff on site to maintain a staff to client ratio ranging from 1:20 to 1:35.

**3. Direct client services**

**a. What services will be provided**

Beyond providing an essential alternative to shelter for individuals who experience a wide range of barriers in accessing traditional shelter, TSA’s SOS site provides three daily meals, showers, case management and housing navigation, access to physical and mental health care, and employment support. Services including showers, touch and go case management, and resource referrals are available to people not residing within the SOS site as well.

As a program following the Housing First model, TSA’s SOS case management is low-barrier and housing focused. This means that services provided by case managers are specifically to make shelter accessible and remove barriers to housing stability. Services are accessible to individuals with disabilities, couples, and individuals with pets. There are no curfews. Support includes help obtaining vital documents like IDs and Social Security Cards, as well as assistance in applying for benefits like SNAP or disability – a process that is notoriously difficult, especially for individuals who lack consistent access to technology and may lack technological literacy. Case managers also regularly provide clients with rides to housing or health related appointments using TSA vehicles.

In addition to receiving transportation, site guests also benefit from community partners who, through relationships with The Salvation Army, are able to offer on-site services. This includes a mobile dentist unit, Aurora Mental Health, Stride Clinic, and a mobile veterinary clinic. Starting in 2023, site guests also have access to TSA’s new in-house Employment Pathways program, which offers job training and career support.

In kind services available to clients using flexible, unrestricted funding include transportation assistance, needed supplies/clothing for work, furniture and supplies for when a client obtains housing.

**b. What type of financial assistance will be provided to clients**

When funding is available, TSA's SOS site is able to provide limited financial assistance with application fees, housing security deposits, first month's rent, one month of utility assistance, and in some cases, eviction prevention assistance for former clients.

This funding will only be used for program staffing and the provision of meals – it will not be used for direct client assistance.

**c. Conduct needs/risk assessments for all clients to determine goals**

**i. Subrecipient is required to perform client intake, a client needs/risk assessment to determine a housing plan.**

TSA's SOS site uses a standardized intake and orientation process which involves completing two assessments provided by the region's Continuum of Care:

- **HMIS Intake** – The HMIS Intake is used to confirm client eligibility by establishing homelessness in accordance with HUD definitions, and collect basic information about a client's background, income information, etc.
- **VI-SPDAT** – The VI-SPDAT is an assessment tool used to establish an individual's level of need regarding housing resources by considering their past experiences of homelessness and co-existing conditions including disability, addiction, domestic violence, household makeup, etc. This information is then used to match the client with the appropriate CoC housing resource.

**ii. Case manager will conduct Needs/Risk Assessment and goal setting**

After conducting the above-described intake and assessment process, case managers begin a goal setting process with site guests. This process is client-centered and begins by defining what success looks like to each individual. While the goal of the program is always for clients to exit to permanent housing, TSA recognizes that clients who have experienced extended periods of unsheltered homelessness may require a variety of housing solutions. As a result, common goals for SOS guests include housing/shelter goals like family reunification, building enough trust to enter traditional shelter, or entering a sober living program. Non-housing related goals include ending a feeling of isolation, obtaining employment or increasing income in some way, obtaining essential documents, etc. All goals, however, ultimately focus on increasing stability to move the client closer to housing.

A case manager works with each client to define what a realistic goal may be for them, and breaks down large goals into small, accomplishable steps. The case manager then works to assist the client to achieve these goals through an approach that relies on the strengths of the client and creating a supportive network of resources around them as needed.

**d. What population of clients will you be serving**

TSA's SOS site serves all individuals experiencing unsheltered homelessness with the exception of minors. It allows partners to stay together and allows guests to stay with their pets. Guests at the SOS site are low-income, and often are members of historically marginalized and underserved populations. Of clients enrolled from June 2020 through the current date, 14% have been seniors, 44% have identified as a race or ethnicity other than white, and 69% have identified as having a disability.

**e. Assistance Documents (if providing financial assistance to clients please include documentation that agency will be collecting)**

TSA's SOS site collects the following documents when providing the relevant financial assistance to clients:

- i. Current Income Statements
- ii. W9 From Creditor/Landlord
- iii. Photo ID
- iv. Ledger/Eviction Notice
- v. Utilities Bill
- vi. Lease

**f. All program participants must be entered into HMIS**

As a part of TSA's SOS intake process (as described in response to Question 3.c.i. – Perform client intake), SOS staff complete the HMIS Intake for each program guest. If the individual does not have a profile in HMIS, one is created for them, and if a household is not appropriately grouped, a household is created with all of the household members receiving services. This information is then used to enroll the client into the appropriate Salvation Army program in HMIS (for TSA SOS sites, this includes SAD\_Aurora ESGCV Temp Warehouse Shelter\_ES, SAD\_Aurora Temporary SOS RCM\_ES, and SAD\_Camping Ordinance SOS\_ES).

In addition to entering clients into HMIS, SOS staff also complete an HMIS Release of Information, and complete a VI-SPDAT assessment for clients, which enables them to be matched to the appropriate housing resources in the region's Continuum of Care.

**4. Shelter Operational Costs**

**a. What operational costs will this funding be used for**

Funding will be used to cover the cost of providing three meals a day to shelter guests, at a per capita cost of approximately \$1.5 for breakfast, \$5.25 for lunch, and \$5.25 for dinner. These will be provided through TSA's central kitchen.

**5. Performance Goals**

**a. How will you measure your performance**

Wellsky, TSA's territory-wide database is used to record and track client data. In particular, it is used to track services provided by client, with the ability to attach funds to services for accurate real time allocation of resources. It also empowers case managers working with clients over an extended period of time to create case plans and administer assessments. Wellsky tracking enables staff to monitor client progress, modify programming, discern trends, avert duplication of services, discourage fraud, and collaborate more efficiently with other service agencies.

Using Wellsky data, TSA has the ability to automatically pull macro-level program outcome reports. These reports include duplicated and unduplicated clients both by household and individual counts, as well as client demographic information, geographic information, number and value of services by type, and more.

Additionally, through its use of HMIS, TSA's SOS site is able to use client Intake and Exit data to generate reports about successful outcomes as they relate to exit destinations, income increases, benefit enrollment, and more. The Salvation Army's Denver Metro Social Services department (TSA DMSS) employs a data quality team including a Monitoring and Evaluation Manager who oversees compliance,

quality assurance, and an HMIS specialist to ensure that data entered in the HMIS system is accurate and that reports provided are timely. This team supports ongoing training and technical assistance for HMIS users. They coordinate regularly with Program Directors and other supervisory staff to ensure all staff are appropriately training to utilize HMIS and to provide high data quality and help reduce and eliminate HMIS data errors, and ensure performance is measured as accurately as possible. The TSA DMSS team generates regular reports to determine what adjustments are warranted in the program and budget to ensure goals are being met and that participants are on track to succeed.

EXHIBIT B  
COMPLIANCE PROVISIONS INCORPORATED  
IN THE SUBRECIPIENT AGREEMENT

1. An accounting system using the accrual basis of generally accepted accounting principles which accurately reflects all costs chargeable (paid and unpaid) to the Project is mandatory. A receipts and disbursements ledger must be maintained. A general ledger with an income and expense account for each budgeted line item is necessary. Paid invoices revealing check number, date paid, and item is necessary. Similarly, cash receipts for the payment of wages is mandatory. Paid invoices revealing check number, date paid, and evidence of goods or services received are to be filed per the expense account they were charged. The City must review and approve your account system and internal controls prior to the release of funds.

2. There is no flexibility regarding budgets. Line items may be changed only by the City's written concurrence of a budget amendment.

3. Eligible expenses are those considered reasonable and necessary costs for the efficient operation of the Project as determined by the City. All costs must be budgeted items. Request for advance or reimbursements of expenses must be accompanied by:

1. Original invoice marked with funding source
2. Detailed listing of each expense showing:
  - a) recipient
  - b) brief description of purchase
  - c) amount with method of computation detailed

Cost Summary must be submitted monthly to reflect entries through the closing date for the books (indicate Closing Date on Cost Summary).

4. The City shall not be obligated to any third party contractors of the Subrecipient. The subrecipient is further cautioned against obligating funds beyond the contract date of the agreement between the City and the Subrecipient.

5. The Subrecipient will furnish the City such statements, records, data and information, and permit such interviews with personnel as the City may request to effectively monitor and evaluate the project.

6. City auditors will periodically make interim audits and may, upon completion of the Project, make a final audit.

7. All records must be retained by the Subrecipient for a period of three years following the last day of the Agreement. (Cost summary reports must reflect actual general ledger balances.)

EXHIBIT C  
CERTIFICATIONS

Subrecipient hereby certifies that the grant will be conducted and administered in compliance with:

- (1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. 2000d, et seq.) and implementing regulations issued at 24 CFR Part 1;
- (2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284; 42 U.S.C. 3601, et seq.), as amended; and that the grantee will administer all programs and activities related to housing and community development in a manner to affirmatively further fair housing;
- (3) Section 109 of the Housing and Community Development Act of 1974, as amended; and the regulations issued pursuant thereto;
- (4) Section 3 of the Housing and Urban Development Act of 1968, as amended;
- (5) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations issued at 41 CFR Chapter 60;
- (6) Executive Order 11063, as amended by Executive Orders 12259, and implementing regulations at 24 CFR Part 107;
- (7) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published for effect;
- (8) The Age Discrimination in Employment Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect;
- (9) The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the HUD implementing regulations set forth in 24 CFR Part 42;
- (10) Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention, control and abatement of water pollution;
- (11) The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234);
- (12) The applicable regulations, policies, guidelines and requirements of OMB Circular Nos. A-102, Revised, 24 CFR 85 and Subpart J of 24 CFR 570, A-87, A-110, A-122, A-128 and A-133 as they relate to the acceptance and use of federal funds under this federally-assisted program;

(13) The Clean Air Act (42 U.S.C. 7401 et.seq.) as amended; particularly section 176 (c) and (d) [42 U.S.C. 7506 (c) and (d)];

(14) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300 (f) et.seq., and 21 U.S.C. 349) as amended; particularly section 1424 (e) (42 U.S.C. 300 (h)-303 (e));

(15) The Endangered Species Act of 1973 (16 U.S.C. 1531 et. Seq.) as amended; including but not limited to section 7 (16 U.S.C. 1536) thereof;

(16) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et.seq.); particularly section 3 (16 U.S.C. 469a-1); as amended by the Archeological and Historical Preservation Act of 1974;

(17) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et.seq.) as amended; particularly sections 102(a) and 202(a) [42 U.S.C. 4012a(a) and 4106(a)];

(18) Executive order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et. Seq.); particularly sections 2 and 5;

(19) Lead-Based Paint Poisoning Prevention requirements of 25 CFR Part 35 issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et.seq.);

(20) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended; particularly section 106 (16 U.S.C. 470f); and

(21) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.); particularly section 2(c).

(22) Construction work financed in whole or in part with federal funds is subject to the prevailing wage requirements of the Davis-Bacon Act (29 CFR, Parts 3 and 5), the Copeland Act (29 CFR Part 3), and the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96). When a project meets this applicability requirement, the labor standards provision of the HUD 4010 and the Davis Bacon Wage Decision issued for the project will be incorporated into this contract document and shall be incorporated into all construction contracts and subcontracts of any tier thereunder.

(23) No ARPA funds may be expended for lobbying purposes and payments from other sources for lobbying must be disclosed (24 CFR Part 87).

(a) No federally appropriated funds have been or will be paid, by or on behalf of subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.



(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, 14 a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(24) Where asbestos is present in property undergoing rehabilitation, Federal requirements apply regarding worker exposure, abatement procedures and disposal. (CPD-90-44 EPA/OSHA).

EXHIBIT D  
INSURANCE REQUIREMENTS

During the term of this Agreement and until final acceptance by the City of all work covered by the Agreement, Subrecipient performing services under this Agreement shall provide, pay for and maintain in full force and effect the types and minimum limits of insurance, as indicated below, covering the Subrecipient, their employees, subcontractors or representatives, along with: the activities of any and all subcontractors retained by the Subrecipient or Subcontractors, the activities of anyone employed by any Subrecipient, Subcontractors, their representatives or anyone for whose acts they may be liable.

**Commercial General Liability Insurance.** Subrecipient shall maintain commercial general liability insurance covering all operations by or on behalf of Subrecipient on a per occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Coverage will include, if appropriate for the scope of services: Products and Completed Operations, Contractual Liability and a Waiver of Subrogation. The City, its elected and appointed officials, employees, agents and representatives shall be named as Additional Insureds by endorsement.

Minimum limits:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations

**Commercial Automobile Liability Insurance.** Subrecipient shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, naming the City as an Additional Insured by endorsement.

**Workers' Compensation and Employers Liability Insurance.** Subrecipient shall maintain Worker's Compensation Insurance with limits in accordance with the provisions of the Workers' Compensation Act, as amended, by the State of Colorado. Additionally, Subrecipient shall maintain Employers Liability Insurance with minimum limits of \$500,000 bodily injury for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury disease aggregate.

Subrecipient is responsible for verifying that the subcontractor's insurance is in effect prior to commencement of work and remains in effect throughout the time that the subcontractor performs work on the project. Any subcontractor who ceases to provide insurance coverage as set forth above must be removed from the project until such time that insurance coverage can be verified as in full force and effect.

**Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

**Additional Insured and Waiver of Subrogation.** Subrecipient shall name the City of Aurora, its elected and appointed officials, employees, agents and representatives as additional insureds by endorsement and provide a waiver of subrogation for the Commercial General

Liability, Auto Liability and Excess Liability insurance policies. The certificate of insurance will include these specific requirements along with a copy of the relevant endorsements.

**Certificates of Insurance.** Upon the execution of this Agreement, Subrecipient shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. Subrecipient agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without Thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of Subrecipient's or its subcontractor's coverage is renewed at any time prior to completion of the services, Subrecipient shall be responsible for obtaining updated insurance certificates for itself and such subcontractor from the respective insurance carriers and forwarding the replacement certificates to the City within five (5) days of the expiration date of any previously delivered certificate.

The minimum A.M. Best rating of each primary insurer shall be A- X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The Subrecipient shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City in response to the particular circumstances giving rise to the contract. **Subrecipient's policy will be primary and non-contributory with respect to any and all insurance policies purchased by the City.**

In the event that the contract involves professional or consulting services, in addition to the aforementioned insurance requirements, the contract shall also be protected by a Professional Liability Insurance policy as set forth below:

**Professional Liability Insurance.** Subrecipient shall maintain professional liability insurance with minimum limits of One Million Dollars (\$1,000,000), covering those claims which arise out of the negligent acts or omissions of the Subrecipient, its Subcontractor and any other parties for whom it may be liable including without limitation, bodily injury, personal injury, property damage and including a contractual liability endorsement specifically applicable to the insurable indemnity obligations set forth herein which Professional Liability Insurance shall be carried on a claims-made basis maintained in full force and effect for the term of this Agreement and, to the extent possible, for a minimum period of Three (3) years after the completion of any and all of Subrecipient's Services hereunder. Any retroactive date or prior acts exclusion to which such coverage is subject shall pre-date both the date upon which any services hereunder are commenced and the date of this Agreement. In the event that coverage is renewed during the original term of any subsequent term of this agreement, endorsement(s) for the new policy(ies) shall be delivered within five (5) days of the expiration date of any previously delivered certificate.



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Fulenwider Sanitary Reimbursement Agreement
<b>Item Initiator:</b> Daniel Pershing, Engineer II, Aurora Water
<b>Staff Source/Legal Source:</b> Sarah Young, Assistant General Manager of Planning and Engineering, Aurora Water / Ian Best, Asst City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S APPROVAL OF THE SECOND CREEK SANITARY SEWER REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF AURORA ACTING BY AND THROUGH ITS UTILITY ENTERPRISE AND HM METROPOLITAN DISTRICT NO. 1

Sarah Young, Assistant General Manager of Planning and Engineering, Aurora Water / Ian Best, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

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**Policy Committee Name:** Water Policy

**Policy Committee Date:** 11/15/2023

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval  
 Forwarded Without Recommendation  Minutes Not Available  
 Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

On November 15, 2023, the Water Policy Committee supported moving the APPROVAL OF A RESOLUTION regarding a regional utility cost reimbursement between the City of Aurora and Fulenwider, LLC., forward to the December 11<sup>th</sup> Study Session.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

Reimbursement agreements are required when a developer builds Regional Infrastructure (large infrastructure serving more than one development) ahead of when it is scheduled and subsequently budgeted in **Aurora Water's capital improvement plan(s). Regional infrastructure locations and sizing are identified in Water, Wastewater and Stormwater Master Plans.** If Regional Infrastructure is connected to, or crosses, a certain development, that developer is required to adhere to the size requirements identified in the respective Master Plan.

Fulenwider is a master planned community within Ward II. The development needed a sanitary system composed of 8, 12, and 15 inch pipes to serve the wastewater needs of their site. The Wastewater Master Plan required a 30 inch interceptor within the same corridor along Second Creek to serve the regional needs of the City. Therefore, a reimbursement agreement was proposed for the upsizing of the 8, 12, and 15 inch pipes to a 30-inch interceptor from 56<sup>th</sup> Avenue to 68<sup>th</sup> Avenue (see Exhibit A). HM Metropolitan District (Developer) is eligible for partial reimbursement of \$1,749,092.00 for the upsize in piping for their site. The terms stated in the agreement are as follows:

- Developer is responsible for 100% of the improvement costs upfront and will be reimbursed the eligible amount for the improvements.
- Developer must utilize an Aurora Water approved design firm and construction contractor.
- Developer and City must agree on eligible reimbursement amounts.
- Developer must submit all applicable invoicing and payment documentation such as detailed pay requests supported by the design firm and contractor invoices for all eligible cost reimbursements.
- Reimbursement costs will be paid from Development fees collected from the benefited tributary area.
- Infrastructure shall meet all City requirements and standards.
- Reimbursements will be paid in accordance with Section 5 of the agreement which states that the developer is required to submit invoices for completed work to the City for review and approval of constructed Regional Improvements accompanied by supporting documentation. The invoices must be approved by Aurora Water prior to payment and shall not exceed the Eligible Reimbursement Amount plus a 10% contingency, unless otherwise approved by City Council.
- Section 3(e) of the agreement, Change Order Management, provides a ten percent (10%) contingency allowance of the Eligible Reimbursement Amount. If any Change Orders exceed ten percent (10%) of the Eligible Reimbursement Amount, then City Council authorization is required.
- All Regional Infrastructure shall have a three-year warranty.
- Developer acknowledges that it is still responsible for payment of all fees in accordance with the **City's fee** schedule.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and **skip to "Questions for Council"**)

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact  
 Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

Funding for this Reimbursement Agreement will be from the Capital Improvement Program, Wastewater Fund and will be partially offset by fees collected. The total eligible reimbursement amount is \$1,749,092.00. Reimbursement will be \$50,000 each year for the first four years. The lump sum remainder will be paid in the fifth year.  
  
ORG: 52346 (Reimbursement – Collection)

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does Council support the APPROVAL OF A RESOLUTION regarding a regional utility cost reimbursement between the City of Aurora and Fulenwider, LLC.?

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**LEGAL COMMENTS**

The City is authorized to cooperate and contract with any political subdivision of the State of Colorado, to provide any function, service, or facility lawfully authorized to each of the contracting or cooperating units of government (Article XIV of the Colorado Constitution and C.R.S. 29-1-203). The City Charter authorizes the City by resolution to enter into contracts or agreements with other governmental units, including special districts, for the joint use of buildings, equipment or facilities or for furnishing or receiving commodities and services (Charter Section 10-12).  
(Best)

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RESOLUTION NO. R2023- \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S APPROVAL OF THE SECOND CREEK SANITARY SEWER REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF AURORA ACTING BY AND THROUGH ITS UTILITY ENTERPRISE AND HM METROPOLITAN DISTRICT NO. 1

WHEREAS, the City of Aurora, acting by and through its Utility Enterprise ("Aurora Water") and HM Metropolitan District No. 1, a quasi-municipal corporation ("Developer") have agreed to enter a Regional Utility Cost Reimbursement Agreement to fund the installation of approximately one and one half (1.5) miles of thirty-inch (30") diameter sanitary sewer lines along Second Creek ("Improvements"); and

WHEREAS, Developer is the owner of certain real property ("Property") located within the City of Aurora Colorado consisting of approximately seven hundred and twenty (720) acres; and

WHEREAS, in connection with development of the Property, Developer has agreed to construct and/or install the Improvements to serve both the Property and adjacent properties sized to serve regional needs as defined in the City's Master Plan; and

WHEREAS, the Developer is willing to construct the Improvements prior to the time Aurora Water is prepared or obligated to and has agreed to be reimbursed for certain approved incremental costs; and

WHEREAS, the Improvements are regional in nature and will benefit users outside of Developer's service area and will also benefit the health, safety, and general welfare of the residents of Aurora; and

WHEREAS, the eligible reimbursement amount for the Improvements is one million seven hundred forty-nine thousand and ninety-two dollars (\$1,749,092.00); and

WHEREAS, the City is authorized, pursuant to Article XIV of the Colorado Constitution and Section 29-1-203 of the Colorado Revised Statutes, to cooperate and contract with any political subdivision of the State of Colorado, to provide any function, service, or facility lawfully authorized to each of the contracting or cooperating units of government; and

WHEREAS, Section 10-12 of the City Charter authorizes the City by resolution to enter into contracts or agreements with other governmental units, including special districts, for the joint use of buildings, equipment or facilities or for furnishing or receiving commodities and services.

WHEREAS, Aurora Water is authorized, pursuant to City Code 138-28 to acquire, construct, operate, maintain, improve and extend water, wastewater, and storm drainage facilities

within or without the corporate boundaries of Aurora, and to make contracts, acquire lands, and do all things that are necessary or convenient therefore.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The Regional Utility Cost Reimbursement Agreement between Aurora Water and Developer regarding the Improvements is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the attached agreement in substantially the form presented at this meeting with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*Ian J Best* *RLA*  
\_\_\_\_\_  
IAN BEST, Assistant City Attorney



## **Aurora Water Regional Utility Cost Reimbursement Agreement**

This Aurora Water Regional Utility Cost Reimbursement Agreement (“Agreement”), is entered into this this 3rd day of NOVEMBER, 2023 (“Effective Date”), by and between the HM Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ( “Developer”), and the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise (“City”), whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado, 80012. The City and Developer shall be referred to herein individually as “Party”, and collectively as “Parties”.

### **Recitals**

WHEREAS, Developer/Developer is the owner of certain real property (“Property”) located within the City of Aurora Colorado consisting of approximately 720 acres; and

WHEREAS, in connection with development of the Property, Developer is required to install certain water, sewer or storm drainage lines (“Improvements”) and that the Improvements may serve both the Property and adjacent properties (“Regional Improvements”) and will be sized to serve regional needs as defined in the City’s Master Plan; and

WHEREAS, the Regional Improvements are defined as installation of approximately 1.5-miles of 30-inch diameter sanitary sewer, large enough to serve the Property and other properties in the region, and as presented in the Exhibit A map and EDN 222014; and

WHEREAS, the Regional Improvements are required for the Developer to obtain SANITARY SEWER service for their project; and

WHEREAS, the Developer is willing to construct the Regional Improvements (as more specifically defined in this Agreement) prior to the time the City is prepared or obligated to do so and the Developer will undertake the installation of the Regional Improvements and payment of one hundred percent (100%) of the cost thereof; and

WHEREAS, the City is willing to reimburse the Developer for certain approved incremental costs associated with installation of the Regional Improvements limited to revenues generated from the portion of the SANITARY SEWER connection fees as specified in City Code from adjacent and/or connecting properties benefitting from the Improvements.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **Agreement**

#### **1. Regional Improvements Initial Payment and Reimbursable Costs.**

(a) Initial Payment of Improvements Costs. Developer shall be responsible for (subject to partial reimbursement by Aurora Water pursuant to this Agreement) one hundred percent (100%) of the Regional Improvement Costs.

(b) Eligible Reimbursement Amount. Aurora Water will only reimburse Developer for the difference in cost between the infrastructure required to serve the Property and the Regional Improvements (“Eligible Reimbursement Amount”). The Eligible Reimbursement Amount will not exceed the estimated cost difference plus a ten percent (10%) contingency without additional approval of the Aurora City Council. The Eligible Reimbursement Amount estimate, as calculated by the Developer and reviewed and approved by the City, is \$1,749,092 (one million seven hundred forty-nine thousand ninety-two dollars). All reimbursements must be certified by the General Manager of Aurora Water or designee before payment shall be authorized. Upon completion of the Improvements and Initial Acceptance by the City, the Parties shall confirm in writing the final amount owed to Developer for reimbursement.

(c) Connection Payment Limitation. The City in no event shall be required to pay any greater amount than the revenues received from the sanitary sewer interceptor development fee as referenced in Section 138-326 of City Code/drainage basin development fee as referenced in Section 138-396 of City Code collected from properties adjacent and/or connecting to the Regional Improvements.

(d) Metropolitan Districts. Developer may organize one or more metropolitan districts (“District”) to finance and be responsible for certain obligations, including Developer’s obligations pursuant to this Agreement. Upon the formation of a District, such district may assume the obligations of Developer with respect to the Improvement (“Assumed Obligation”) by executing an assumption agreement (“Assumption Agreement”) whereby (a) the District assumes the duties of Developer with respect to the Assumed Obligation, and (b) agrees to perform the obligations and make the deposits required to be performed and paid hereunder by Developer with respect to the Assumed Obligation. Notwithstanding the assumption of and Assumed Obligation by a District, Developer will remain responsible for an Assumed Obligation, and if a District fails to perform and/or timely pay an Assumed Obligation, then Developer will perform and timely pay such Assumed Obligation. Nothing in this Agreement will be construed as an approval by the City of creation of a District.

## **2. Regional Improvements Engineering and Design.**

(a) Project Engineer. If the Regional Improvements have not already been designed by the City, the Developer, will select a project engineer and/or equally qualified project manager (“Project Engineer”) from the City’s list of pre-qualified engineers to undertake and supervise the design, engineering, and construction of the Regional Improvements and to provide cost estimating for construction. If the Regional Improvements have been designed by the City, all work necessary to complete the Regional Utility Project is documented in the Contract Documents and the schedule of values attached hereto as **Exhibit B**. The Project Engineer shall review the Contract Documents and shall coordinate contractor submittals required under the Contract Documents and requests for information with the City and the City’s Project Engineer for the Regional Improvements to ensure all materials and product processes meet City standards and the Contract

Documents. All submittals shall be uploaded to the City's Electronic Document Management System, exclusively, currently EADOC. If the Project Engineer or Contractor has never used EADOC, the City offers a two (2) hour training free of charge. At least twenty-one (21) days is to be allowed for review and approval of required contract submittals. The City will advise the Project Manager if larger or more complex submittals require additional review time.

(b) Easements and Engineering Design. If the Regional Improvements are not located in City right-of-way and the Regional Infrastructure requires easements which have not yet been obtained by the City, as part of preliminary design, Developer will prepare the legal exhibits and descriptions for the required Regional Infrastructure easements and obtain or dedicate by plat or by separate document for the maintenance and operation of the Regional Improvements. Preliminary design must be at least thirty percent (30%) of the anticipated final design. Upon approval of the preliminary design of the Regional Improvements by the City, Developer will begin final design and construction plans and specifications for the Regional Improvements and will coordinate with the City when the design is sixty percent (60%) complete. Upon approval of the sixty percent (60%) design by the City, Developer will complete the final design, construction plans, and specifications for the Improvements, and will coordinate with the City to obtain formal and final approval of the plans and specifications from the City through the City's established plans review process. The Developer shall be responsible for engineering drawings, specifications, a Stormwater Management Plan, Geotechnical Report and any other documents or permits required to successfully construct the Regional Improvements ("Contract Documents"). The Regional Improvements shall be built and designed in accordance with all applicable City standards and subject to all applicable ordinances, rules, and regulations of the City.

### **3. Regional Improvements Construction**

(a) Bids. Developer, as a condition for reimbursement, must obtain three (3) qualified bids from contractors that have been pre-qualified and approved through the City's Project Engineer. Developer will submit proposed bid documents to the City for approval before submitting to qualified contractors. Bid documents must include all work to be performed for complete construction of the Regional Improvements within preferred time periods and must identify the bid items eligible for reimbursement as separate line items. Developer shall disclose all subcontractors it intends to use for all principal trade work related to the Regional Improvements. Developer will recommend the contractor to the City and after the City approval, the Developer will execute contracts to perform the work. The City reserves the right to be present at the bid opening, to inspect all bids received by the Developer and for good cause to reject such bid.

(b) Supervision. Developer and Project Engineer will supervise all design, bidding processes and construction of the Regional Improvements through and including completion of construction, dedication to and final acceptance by the City ("Project Completion"). The City will only pay management costs for the Project Engineer.

(c) Pre-Construction Meeting. The Developer will schedule and participate in a pre-construction meeting with the City and representatives from all utilities and local governing entities to be impacted by the Regional Improvements.

(d) Payment Administration. Developer and Project Engineer will review contractor pay requests and submit pay requests to the City for payment of the costs of the Regional Improvements.

(e) Change Order Management. The Project Engineer, Developer and the City can request change orders. Project Engineer will prepare, review, and make a recommendation on change orders. Only those change orders approved by the City's Project Engineer prior to the work being performed will be included in the Eligible Reimbursement Amount. Work performed on any Change Order prior to Aurora Water's approval will not be subject to reimbursement. At such time as the change order is approved, the Parties will update the Eligible Reimbursement Amount to include the amount of the change order that is to be included in the Eligible Reimbursement Amount. If Change Orders exceed ten percent (10%) of the Reimbursement Amount, then City Council authorization is required.

(f) Inspection. The Developer will provide notice to the City at least five (5) days prior to installation of Regional Improvements to allow the City to inspect the installation and provide the City at least twenty-four (24) hours for inspection after installation of the Regional Improvements. The Developer will correct any deficiencies required by the City in a manner satisfactory to the City, in its sole discretion, and within a reasonable time as determined by the City in consultation with Developer prior to backfill. Paving will only be allowed once the improvements have been initially accepted by the City if applicable.

#### 4. Acceptance and Dedication of Regional Improvements.

(a) Utility Permit Extension Agreement. The Developer shall apply for and enter into a Utility Permit Extension Agreement ("EA") after the plans are approved by the City and prior to the start of construction of the Regional Improvements.

(b) Initial Acceptance of Regional Improvements. After fill, compaction and paving, all pipes are subject to testing in accordance to Section 11 (Water) and Section 21 (Sanitary). "**Substantial Completion**" of the Regional Improvements is reached once these tests are passed, as determined by the City in its sole discretion. At that time, if no punch list items are noted (i.e. swapping manhole lids, rotating hydrants, missing 3M markers, etc.) the City will issue "**Initial Acceptance**" of the Regional Improvements.

(c) Final Completion and Project Acceptance. Once the Developer receives Initial Acceptance of the Regional Improvements, and connection to the Regional Utility Project is fully complete, the Regional Improvements are operating as functionally intended, all as determined by the City in its sole discretion, and the warranty period has passed, the Regional Improvements will have reached "**Final Completion**" and receive "**Final Acceptance**" by the City.

(d) Dedication to and Acceptance of Improvements by City. Upon acceptance of the Improvements by the City ("Initial Acceptance") the Improvements shall become the property of the City. The responsibility for the operation of the Improvements shall be that of the City. Upon expiration of the warranty period specified in the Utilities Extension Agreement and this agreement whereby this agreement will supersede, the City shall be liable for all repair and maintenance of the Improvements.

(e) Warranty. Upon Substantial Completion, the Developer will provide a one (1) year warranty that the Regional Improvements are constructed in substantial accordance with Contract Documents. Developer's warranty responsibilities for the Regional Improvements shall be as specified in the extension agreement.

## **5. Reimbursement Process**

(a) Documentation. The Eligible Reimbursement Amount shall be reduced by actual costs incurred by the contractor and the actual amount from any change orders requested for the Regional Improvements in writing by the Developer and accepted by the City. The reimbursement amount shall not exceed the Eligible Reimbursement Amount. The Eligible Reimbursement Amount must be fully supported by invoice and payment documentation which shall be supplied to the City in City approved formats and which may include but not limited to; signed pay applications from the contractor for actual costs incurred, credited costs for the original infrastructure size for an accurate delta for infrastructure upsize, and signed change orders with detailed descriptions of the work performed and line item costs. All reimbursable costs shall be in a line item format per eligible expense (i.e. 24" pipe, 5' manholes, etc. in lieu of "utility work"). Documentation should include proof of payment acceptable to the City (i.e. copies of checks, signed lien waver, etc.).

(b) Payment. The City's obligation to Developer for reimbursement shall be limited to fees collected from adjacent or connecting developments. Unless otherwise agreed upon, reimbursement to the Developer will be paid annually, commencing after initial acceptance of the Improvements. The due date for payment shall be forty-five (45) days after the end of each year.

(c) Connection Fees. The Developer acknowledges that it is still responsible for payment of all connection fees in accordance with the City's fee schedule and these fees are not subject to this agreement.

## **6. Claims**

(a) Defined. A "**Claim**" is any demand, contention, or assertion by the Developer seeking additional reimbursement other than change orders approved pursuant to Subparagraph 3(a), above. Claims by the Developer must be made in writing as specified herein. Claims from the Developer must contain and are subject to all the following:

(1) A narrative statement referencing and attaching the supporting documentation and specifically describing the legal, factual and contractual basis of the Claim. All Claims shall be identified as made necessary due to specific legal, factual, or contractual circumstances necessary to the orderly completion of the Regional Improvements.

(2) If the Claim is for additional compensation, the Claim must include a detailed calculation of the precise amount claimed with all supporting documentation. All Claims must reference the specific contract provisions relied upon to support the Claim. All Claims must reference that the claim is being submitted under this Agreement. Any writing or other form of notice, however designated, which fails to reference this Agreement shall not be deemed to constitute a valid Claim hereunder.

- (3) The City shall not pay any costs for delay.
- (4) The City shall not pay any costs for acceleration.

Items (a)(1) through (4) above shall hereinafter be referred to as the “**Final Accounting**”.

(b) Notice of Claim. A “**Claim Notice**” must be made in writing within ten (10) business days after the Developer becomes aware of the occurrence of the legal, factual, or contractual basis of the Claim. Within ten (10) business days of the submission of a Claim Notice, a complete Claim, including Final Accounting, shall be submitted in writing to the City or the right to submit a Claim is waived. The Developer shall submit all information reasonably available that is otherwise required in the Final Accounting at the time of the claim. Failure to timely provide the Final Accounting shall constitute a waiver of the Claim.

(c) Complete Claim Required. All requests for additional reimbursement by the Developer shall be considered a separate Claim and shall follow the Claim procedures specified above. All information required in the Final Accounting must be submitted within the time limits established herein, and no supplementation of the information shall be permitted, unless otherwise agreed to by the City. Any attempted reservation of the right to submit or supplement an earlier-made claim shall be void.

(d) Claim Review. After review of a Claim submitted by the Developer, the City shall decide whether the Developer is entitled to a change order for such Claim. The City shall not unreasonably deny a Claim. In the event the City approves a Claim, it shall initiate a written change order addressing the legal, factual, or contractual circumstances giving rise to the Claim. If in the opinion of the City, the Developer is not entitled to a change order for a Claim, the Developer shall receive notice of the decision in writing from the City within five (5) business days of receipt of the Claim by the City.

(e) Appeal. In the event the City denies a Claim, the Developer shall be entitled to appeal said decision within five (5) business days of receipt of the denial from the City. If the Developer desires to challenge the City’s denial, the Parties shall within ten (10) business days engage an independent engineer to review the Claim and make a final determination to approve or deny. If the independent engineer determines that the Claim should be approved, the City shall issue a change order. The Developer shall not re-submit a Claim following final denial. The costs of such independent engineer shall be equally allocated between the Parties. This will be the final determination with regard to the Claim.

**7. Term.**

The term of this Agreement shall cease ten (10) years after the approved date of this Agreement. The term of this Agreement shall be extended by up to two (2) five (5) year intervals if Developer has not been reimbursed the full Eligible Reimbursement Amount, and adjacent or connecting developments are planned or anticipated. If the Developer has not commenced the Improvements within three (3) years of the Effective Date, the City may revisit the terms of this Agreement.

**8. Obligation of Aurora Water.**

Any and all obligations of Aurora Water under this Agreement will be the sole obligation of Aurora Water and, as such, will not constitute a general obligation or other indebtedness of the City or a

multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City, within the meaning of any constitutional, statutory or other Charter limitation. In the event of a default by the City on any of its obligations under the terms of this Agreement, the non-Defaulting party will have no recourse against any of the funds of the City except for the Utility Enterprise Wastewater Fund; provided, however, that the non-defaulting party's recourse against said fund will be on a basis subordinate and junior to that of the holders of any bonds, notes, or other obligations issued by the City or Aurora Water payable from the remains of the fund, after the payment of said bonds, notes, or other obligations.

**9. Non-Appropriation.**

The Parties acknowledge and understand that any financial obligations of the respective Parties payable after the current fiscal year are contingent upon funds for that purpose being budgeted and appropriated by their respective governing bodies. Accordingly, should either governing body exercise its right not to appropriate funds for any future fiscal year sufficient for the continued performance the obligations under this Agreement, this Agreement shall terminate at the close of the fiscal year for which funds were last appropriated without penalty or recourse.

**10. Relationship of Parties.**

Nothing contained herein will be construed or interpreted as (a) creating a joint venture, partnership, or other similar relationship between Developer or the Parties; (b) obligating any party to perform any of the terms, covenants or provisions of any Annexation Agreement between the Parties; (c) entitling any person or entity not a party to this Agreement to any of the benefits of this Agreement; (d) appointing a party to this Agreement as agent of the others or authorizing a party to this Agreement to make contracts in the name of the others; or (e) creating, establishing or imposing a fiduciary duty owned by one party to the other hereunder or in any way creating a fiduciary relationship between the parties.

**11. Notices.**

Any notice or Claim provided for or required to be given hereunder will be in writing and will be deemed given (a) the date personally delivered or transmitted by facsimile or email transmission to the recipient of such notice at the facsimile numbers or email addresses hereinafter identified; or (b) three (3) days after the date deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the recipient of such notice at such place as a Party may designate in writing for such purpose or, in the absence of such designation. Notices shall be provided as follows:

If to the City:	Engineering Services Manager City of Aurora 15151 East Alameda Parkway, Suite 3600 Aurora, CO 80012 Email: <a href="mailto:waterengineering@auroragov.org">waterengineering@auroragov.org</a>
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If to the Developer:	HM Metropolitan District No. 1 1125 17 <sup>th</sup> Street, Suite 2500 Denver, CO 80202 Attn: Gregg Johnson
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Telephone: (303) 324-5653  
Email: gregg@fulenwider.com

With a copy to:

Attn: Rick Wells  
Email: rwells@fulenwider.com

**12. Further Acts.**

Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

**13. Amendment; Headings for Convenience Only; Not to be Construed Against Drafter; No Implied Waiver.**

No amendment, change or addition is to be made to this Agreement except by written amendment executed by the Parties. The headings, captions and titles contained in this Agreement are intended for convenience of reference only and are of no meaning in the interpretation or effect of this Agreement. This Agreement shall not be construed more strictly against one (1) Party than another merely by virtue of the fact that it may have been initially drafted by one (1) of the Parties or its counsel, since all Parties have contributed substantially and materially to the preparation hereof. No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by the other Party(ies), shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

**14. Severability.**

If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.

**15. Computation of Time Periods.**

All time periods referred to in this Agreement shall include all Saturdays, Sundays, and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday, or a national holiday.

**16. No Waiver of Governmental Immunity.**

Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall be deemed a waiver of any protections afforded to the Parties pursuant to Colorado law, including, but not limited to, the Colorado Governmental Immunity Act.



**17. Successors and Assigns.**

The Developer may not assign this Agreement without the consent of the City, which shall not be unreasonably withheld or conditioned. This Agreement is intended by the Parties hereto to be of use and benefit of the Parties and no person or entity not a party to this Agreement will be authorized or entitled to rely on the benefits of this Agreement or seek to enforce any of the terms, provisions or covenants contained herein as a third-party beneficiary hereof.

**18. Governing Law.**

This Agreement is entered into in Colorado and shall be construed and interpreted under the law of the State of Colorado without giving effect to principles of conflicts of law which would result in the application of any law other than the law of the State of Colorado. Any legal dispute arising hereunder shall be tried and heard in the Developer Court for the County of Adams, State of Colorado. In the event that legal action is instituted to enforce any of the provisions of the Agreement, the prevailing party shall recover from the losing party its reasonable attorneys' fees and court costs.

**19. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which will constitute an original agreement, but all of which together will constitute a single agreement. A facsimile transmitted copy of this Agreement executed by one of the Parties hereto will be accepted as an originally executed copy of this Agreement.

**20. No Personal Liability.**

No elected official, director, officer, agent or employee of either Party shall be charged personally or held contractually liable by or under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

**21. Definitions**

**City's Project Engineer**

**Regional Improvements**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

Company Name

HM Metropolitan Dist. #1  
HM Metropolitan District 1

H. Rickey Wells  
H. Rickey Wells, President

11/3/23  
Date

State of Colorado )  
County of DENVER ) ss

The foregoing instrument was acknowledged before me this 3rd day of November, 2023 by H. Rickey Wells President acting on behalf of the H.M. Metropolitan District 1.

Witness my hand and official seal. Laurie Kane  
Notary Public

My commission expires: Jan 9, 2024

(Seal)



City of Aurora, Colorado,  
Acting by and through its  
Utility Enterprise

\_\_\_\_\_  
Mike Coffman, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Kadee Rodriguez, City Clerk

\_\_\_\_\_  
Date

Approved as to form for Aurora:

*Ian J Best*  
\_\_\_\_\_  
Ian Best  
Asst. City Attorney

11/8/2023  
\_\_\_\_\_  
Date

23037362  
\_\_\_\_\_  
ACS #

State of Colorado            )  
  ) ss  
County of Arapahoe        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023,  
by Mike Coffman, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora,  
Colorado.

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

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

(Seal)

# Exhibit A - Sanitary Improvements





# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Amendment to an Intergovernmental Agreement with Metro Water Recovery for Delivery of Reusable Raw Water
<b>Item Initiator:</b> John Murphy, Water Resources Project Manager, Aurora Water
<b>Staff Source/Legal Source:</b> Alexandra Davis, Assistant General Manager of Water Supply and Demand / Ian Best, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/4/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S APPROVAL OF THE FIRST AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE AND THE METRO WASTEWATER RECLAMATION DISTRICT FOR DELIVERY OF REUSABLE RAW WATER  
 Alexandra Davis, Assistant General Manager of Water Supply and Demand, Aurora Water / Ian Best, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

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**Policy Committee Name:** Water Policy

**Policy Committee Date:** 11/15/2023

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval  
 Forwarded Without Recommendation  Minutes Not Available  
 Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

On April 22, 2020, the Water Policy Committee supported moving an Intergovernmental Agreement for the delivery of reusable raw water with Metropolitan Wastewater Reclamation District forward to Study Session.

On June 1, 2020, City Council APPROVED A RESOLUTION regarding an Intergovernmental Agreement for the delivery of reusable raw water with Metropolitan Wastewater Reclamation District as item 10h.

On November 15, 2023, the Water Policy Committee supported moving an Amendment to an Intergovernmental Agreement for the delivery of reusable raw water with Metro Water Recovery to the December 4<sup>th</sup> Council meeting.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

In 2020 Metro Water Recovery, formerly Metropolitan Wastewater Reclamation District, identified a need for a water supply to irrigate the grounds at the Northern Treatment Plant and requested a lease for the delivery of Reusable Raw Water from the City for this purpose.

The 2020 IGA provides for a maximum delivery of 45 acre-feet (AF) per year. The lease automatically renews year to year for a maximum of 10 years unless either party terminates the agreement. The original price per AF was \$550 subject to annual increases based on City Rate increases.

Metro Water Recovery notified Aurora that the irrigation needs for 2024 will exceed the 45 AF limit and requested an increase to the lease amount. This amendment will increase the maximum annual delivery to 100 AF. All other terms of the 2020 IGA remain the same. The 2024 price per AF for reusable raw water is \$622.

Agreements such as this one bring value to the City by utilizing available supplies and increasing revenues. This Agreement will bring revenue to the City from excess Reusable Return Flows owned by the City at the Northern Treatment Plant and provide a non-potable source of water for Metro's irrigation need.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact  
 Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

2024 Estimated Irrigation need is 59 AF. At \$622 per AF revenues would be \$36,698.00  
ORG: 0500 (Water Ops Fund Admin)

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does Council APPROVE A RESOLUTION of the First Amendment to an Intergovernmental Agreement between the City of Aurora, acting by and through its Utility Enterprise and the Metro Wastewater Reclamation District for delivery of reusable raw water?

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**LEGAL COMMENTS**

Political subdivisions of the state are authorized to cooperate to provide any function, service, or facility lawfully authorized to each of the cooperating units of government (Article XIV, Section 18(2) of the Colorado Constitution and C.R.S. 29-1-203). The Aurora City Charter authorizes City Council to approve by resolution intergovernmental agreements for the joint use of services and facilities (City Charter Section 10-12)(Best).

RESOLUTION NO. R2023- \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S APPROVAL OF THE FIRST AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE AND THE METRO WASTEWATER RECLAMATION DISTRICT FOR DELIVERY OF REUSABLE RAW WATER

WHEREAS, the City of Aurora, Colorado acting by and through its Utility Enterprise ("Aurora Water") has the right to use, sell, or provide its fully-reusable municipal raw water; and

WHEREAS, in 2020 Aurora Water and the Metro Wastewater Reclamation District ("Metro") entered into an intergovernmental agreement for the delivery of reusable raw water ("2020 Agreement"); and

WHEREAS, Aurora Water and Metro now seek to enter a first amendment to the 2020 Agreement to allow Aurora Water to provide up to one hundred (100) acre-feet of reusable raw water per year to Metro;

WHEREAS, Article XIV, Section 18(2) of the Colorado Constitution and C.R.S. 29-1-203 authorize political subdivisions of the state to cooperate to provide any function, service, or facility lawfully authorized to each of the cooperating units of government; and

WHEREAS, Section 10-12 of the Aurora City Charter authorizes City Council to approve by resolution intergovernmental agreements for the joint use of services and facilities; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The first amendment to the Intergovernmental Agreement between Aurora Water and Metro for Delivery of Reusable Raw Water is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the attached agreement in substantially the form presented at this meeting with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney.

Section 3. That the General Manager of Aurora Water, City Clerk, and City Attorney are authorized to take such action and to execute such documents as necessary to implement the intent of this resolution.



Section 4. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*Ian J Best* RLA

\_\_\_\_\_  
IAN BEST, Assistant City Attorney

FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH THE METRO WASTEWATER RECLAMATION DISTRICT (NOW METRO WATER RECOVERY) FOR DELIVERY OF REUSABLE RAW WATER

This first amendment (“Amendment”), entered as of the date of the last signature below, is by and between the City of Aurora, Colorado, a home rule municipal corporation of the counties of Adams, Arapahoe and Douglas acting by and through its Utility Enterprise (“Aurora” or “Aurora Water”), and Metro Water Recovery (formerly known as Metro Wastewater Reclamation District, and hereinafter referred to as “Metro”). Aurora Water and Metro may each be referred to herein as a “Party” or together as the “Parties”.

WITNESSETH

WHEREAS, the Parties are authorized by Colorado law to cooperate and enter into intergovernmental agreements pursuant to Section 18(2) of Article XIV of the Colorado Constitution and C.R.S. 29-1-203; and

WHEREAS, in 2020 the Parties entered into an Intergovernmental Agreement for the Delivery of Reusable Raw Water (the “2020 Agreement”) in which Aurora Water agreed to provide use of certain fully reusable municipal water return flows to the South Platte River (“Reusable Raw Water”) to Metro upon certain terms; and

WHEREAS, such Reusable Raw Water is derived from trans-mountain or other reusable sources; and

WHEREAS, the 2020 Agreement set forth the maximum amount of Reusable Raw Water available to Metro at forty-five (45) acre-feet per year but Aurora Water now has sufficient Reusable Raw Water capacity to provide up to one hundred (100) acre-feet per year to Metro; and

WHEREAS, Metro agrees to continue to pay for the Reusable Raw Water according to the terms set forth in the 2020 Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, Aurora Water and Metro agree as follows:

1. Section 2, Delivery Schedule, of the 2020 Agreement is hereby replaced in its entirety with the following:

“2. **Delivery Schedule.** Delivery of the Reusable Raw Water will be made in accordance with the “Delivery Schedule”, which shall be agreed to between the Parties prior to delivery of the Reusable Raw Water and

will become an Exhibit A to this Agreement. For Additional Years, Metro shall submit to Aurora Water its requested Delivery Schedule by September 1, setting forth monthly delivery totals for the upcoming Additional Year. Any proposed Delivery Schedule shall be effective only upon Aurora Water's written consent, and shall become the Delivery Schedule. Anytime during the Term, Metro may request the Delivery Schedule be amended upon submittal of an amended Delivery Schedule to Aurora Water, which will become the effective Delivery Schedule upon approval by Aurora Water or as agreed to by mutual consent of the Parties. In no event shall the total amount of Reusable Raw Water delivered exceed the maximum amount of one hundred (100) acre-feet per year. As long as Aurora Water is capable of delivering Reusable Raw Water to the Delivery Point (defined in paragraph 3, below) according to the Delivery Schedule, Metro will be obligated to pay the per-acre foot charge in Paragraph 8, below, regardless of whether or not Metro uses the Reusable Raw Water."

2. Except as expressly amended herein, the terms of the 2020 Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, Aurora Water and Metro have caused this instrument to be executed on the dates set forth below.

*[Signatures pages follow]*

**METRO WATER RECOVERY**

By: \_\_\_\_\_  
President of City Council

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM FOR METRO WATER RECOVERY**

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_

**CITY OF AURORA, COLORADO,  
ACTING BY AND THROUGH ITS  
UTILITY ENTERPRISE**

\_\_\_\_\_  
Mike Coffman, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Kadee Rodriquez, City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM FOR AURORA:

*Ian J Best*

\_\_\_\_\_  
Ian Best, Assistant City Attorney

10/31/2023

Date

23031691

ACS #

State of Colorado )

) ss

County of Arapahoe )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Mike Coffman, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

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

Notary Public

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

(Seal)

Voting Aye: Bergan, Berzins, Coombs, Gardner, Gruber, Hiltz, Johnston, Lawson, Marcano, Murillo

- ◆ h. **R2020-47** Consideration to APPROVE A RESOLUTION approving an Intergovernmental Agreement between the City of Aurora, Colorado, acting by and through its Utility Enterprise, and Metro Wastewater Reclamation District for Delivery of Reclaimed Wastewater.  
**Presenter:** Davis, Alexandra - Deputy Director/Water Resource - Aurora Water- Stephanie Neitzel, Assistant City Attorney II

Motion by Berzins, second by Gruber, to approve item 10h.

Voting Aye: Bergan, Berzins, Coombs, Gardner, Gruber, Hiltz, Johnston, Lawson, Marcano, Murillo

- ◆ i. **R2020-48** Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the water line construction and cost reimbursement agreement between Aerotropolis Area coordinating Metropolitan District, a Quasi-Municipal Corporation, and the City of Aurora, acting by and through its Utility Enterprise.  
**Presenter:** Young, Sarah - Deputy Director Wtr Plan/Engin - Aurora Water - Christine McKenney, Client Group Manager

Motion by Marcano, second by Bergan, to approve item 10i.

Voting Aye: Bergan, Berzins, Coombs, Gardner, Gruber, Hiltz, Johnston, Lawson, Marcano, Murillo

- ◆ j. **R2020-49** Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, to acquire certain real property legally described as Lot 18, Block 1, Harmony Subdivision Filing Number 3 and being commonly referred to as 26899 E 1st Place Aurora, CO 80018 in Arapahoe County to serve as Fire Station 17 **(STAFF REQUESTS A WAIVER OF RECONSIDERATION)**  
**Presenter:** Reynoso, Hector - Manager Real Property Services - Public Works - Michelle Gardner, Senior Assistant City attorney

Motion by Johnston, second by Berzins, to approve item 10j with a waiver of reconsideration.

Mayor Pro Tem Johnston asked when the item would be completed.

Jason Batchelor, Deputy City Manager, stated there was not currently a definitive timeline but noted based off the typical process and timeline, construction was expected to start this summer and the City would take possession in the fall with occupancy anticipated to be prior to Thanksgiving.

Council Member Gardner stated he was glad to hear the timeline was relatively short because it was no secret that response times in this part of Aurora were insufficient currently.

Council Member Hiltz stated she was excited to see the item moving forward.

Voting Aye: Bergan, Berzins, Coombs, Gardner, Gruber, Hiltz, Johnston, Lawson, Marcano, Murillo

- ◆ **The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.**

## 6. INTERGOVERNMENTAL AGREEMENT (IGA) FOR DELIVERY OF REUSABLE RAW WATER WITH METROPOLITAN WASTEWATER RECLAMATION DISTRICT

**Summary of Issue and Discussion:** A. Davis presented that the Metro Wastewater Reclamation District (Metro) has a need for a water supply to irrigate the grounds at the Northern Treatment Plant and has requested a lease for Delivery of Reusable Raw Water from the City of Aurora. The lease provides for a maximum delivery of 45-acre feet per year at a price of \$550.00 per acre foot, and the lease will automatically renew year to year for a maximum of 10 years unless either party terminates the agreement. The North treatment plant near Brighton has large areas of native grasses that must be maintained and have previously been irrigated with hydrant water from Brighton. Metro is looking for a non-potable, less expensive option. Aurora has reusable raw water at the North treatment plant through our Thornton effluent trade. Metro will pull some of Aurora's water from the treatment train to use on their grass at the site. As the site becomes more developed, the grass will be removed and buildings will go in, reducing the need for water. The lease is through 2021 with ability to extend up to 2031, and a maximum 45-acre feet per year.

Council Member Bergan asked, why we are able to charge \$550.00 per acre foot versus \$300.00 per acre foot? M Brown replied, the rate of \$300.00 per acre foot had not been inflated over time, and the value of water has recently been re-evaluated to account for inflation over time in future agreements. We also re-evaluated the value of the cost of the water and adjusted the new rate. The rate going forward for most of these supplies will be in the \$550.00 range per acre foot.

**Outcome:** The Committee supports the Intergovernmental Agreement for Delivery of Reusable Raw Water with Metropolitan Wastewater Reclamation District and forwarded to Study Session for consideration.

**Follow-Up Action:** The Committee supports the Intergovernmental Agreement for Delivery of Reusable Raw Water with Metropolitan Wastewater Reclamation District and will forward to Study Session for consideration.

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## 7. OVERVIEW OF REIMBURSEMENT AGREEMENTS

**Summary of Issue and Discussion:** S. Young gave an overview of reimbursement agreements. Reimbursement agreements are required when a developer builds Regional Infrastructure (large infrastructure serving more than one development) ahead of when it is scheduled in Aurora Water's capital improvement plan(s). Regional infrastructure locations and sizing are identified in Water, Wastewater and Stormwater Master Plans. If Regional Infrastructure is connected to, or crosses, a certain development, that developer is required to adhere to the size requirements identified in the respective Master Plan. When a developer builds Regional Infrastructure, they are eligible for a partial cost reimbursement based on the cost of the Regional Infrastructure minus the cost of infrastructure required to serve their individual development (aka infrastructure oversizing). In some instances, the developer is eligible for full reimbursement. This is allowed if their development does not require the Regional Infrastructure in order to gain service, yet there is a project or cost advantage for the developer to install all, or portions of, Regional Infrastructure ahead of the Aurora Water project timing.

General reimbursement agreement requirements include the following:

**Intergovernmental Agreement with the Metro Wastewater Reclamation District  
For Delivery of Reusable Raw Water**

This Intergovernmental Agreement ("Agreement") is entered into on this 30<sup>th</sup> day of June, 2020, by and between the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise ("Aurora"), whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012, and the Metro Wastewater Reclamation District, whose address is 6450 York Street, Denver, Colorado 80229 ("Metro"). Aurora and Metro are each referred to herein as a "Party" and collectively as the "Parties."

**Witnesseth**

WHEREAS, the Parties are authorized by Colorado law to cooperate and enter into Intergovernmental Agreements pursuant to Section 18(2) of Article XIV of the Colorado Constitution and C.R.S § 29-1-203; and

WHEREAS, Aurora has the right to use, sell, or provide for use certain of its fully reusable municipal water return flows to the South Platte River ("Reusable Raw Water"); and

WHEREAS, such Reusable Raw Water is derived from trans-mountain or other reusable sources; and

WHEREAS, Metro treats the Reusable Raw Water at its North Treatment Plant and has a use for a certain portion of this Reusable Raw Water for non-potable irrigation purposes at the North Treatment Plant; and

WHEREAS, Aurora and Metro desire to enter into this Agreement whereby Aurora shall provide a portion of such Reusable Raw Water to Metro; and

WHEREAS, this Agreement will be of mutual benefit and convenience to Aurora and Metro; and

WHEREAS, the Aurora Utility Enterprise staff has determined as a precondition to entering this Agreement that Aurora is able to fulfill all exchange and operational obligations that require Reusable Raw Water, that Aurora is able to fulfill all existing long-term agreements that require Reusable Raw Water (including this Agreement) and that all other needs of Aurora that may be fulfilled by Reusable Raw Water are met; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, Aurora and Metro hereby agree as follows:



## Agreement

### 1. **Term of Lease.**

a. The term of this Agreement shall commence on the Effective Date set forth in Paragraph 21, below, and continue through October 31, 2021, unless this Agreement is extended pursuant to subparagraph (b) below ("Term"). However, in no event shall the Term of this Agreement extend past October 31, 2031.

b. Subject to availability and at Aurora's sole discretion, this Agreement shall automatically renew on an annual basis for additional one (1) year extensions, each additional year (November 1 to October 31) hereinafter referred to as an "Additional Year," unless either Party provides Notice to the other Party, in writing pursuant to Paragraph 20(g) below, by September 1 of the current term that it does not intend to renew this Agreement. The Parties will confirm the Delivery Schedule for any renewal no later than forty-five (45) days prior to any delivery of water during the renewed Term. The continuance of the Term for Additional Years shall be made expressly subject to each of the terms and conditions set forth in this Agreement.

2. **Delivery Schedule.** Delivery of the Reusable Raw Water will be made in accordance with the "Delivery Schedule," which shall be agreed to between the Parties prior to delivery of the Reusable Raw Water and will become Exhibit A to this Agreement. For Additional Years, Metro shall submit to Aurora its requested Delivery Schedule by September 1, setting forth monthly delivery totals for the upcoming Additional Year. Any proposed Delivery Schedule shall be effective only upon Aurora's written consent, and shall become the Delivery Schedule. Anytime during the Term, Metro may request the Delivery Schedule be amended upon submittal of an amended Delivery Schedule to Aurora, which will become the Delivery Schedule upon approval by Aurora or as agreed to by mutual consent of the Parties. In no event shall the total amount of Reusable Raw Water delivered exceed the maximum amount of forty-five (45) acre-feet per year. As long as Aurora is capable of delivering the Reusable Raw Water to the Delivery Point (defined in paragraph 3, below) according to the Delivery Schedule, Metro will be obligated to pay the per-acre foot charge set forth in Paragraph 8, below, regardless of whether or not Metro uses the Reusable Raw Water.

3. **Delivery Location.** Metro agrees that Aurora shall make its delivery of the Reusable Raw Water at the Metro Wastewater Reclamation District's Northern Treatment Plant ("NTP", or "Delivery Point"). Aurora will bear the responsibility for delivery of the Reusable Raw Water to the Delivery Point. Once Aurora has completed its delivery of the Reusable Raw Water hereunder, Metro shall assume sole liability for any loss, damage, or injury that may occur to persons or property as the direct or indirect result of the control and/or use of said Reusable Raw Water by Metro. The amount of Reusable Raw Water reflected in the Delivery Schedule was calculated by Metro to include any transportation losses, or "shrinkage," from NTP to Metro's Point of Use.

4. **Source and Quality of Reusable Raw Water.** The Reusable Raw Water to be provided by Aurora under this Agreement shall consist of reusable municipal return flows belonging to Aurora and delivered through the NTP to the South Platte River. Under no circumstances shall this Agreement be interpreted to mean that Aurora must supply any other source of water should the

sources set forth in this paragraph be unavailable. Aurora does not warrant or guaranty any water quality standards with respect to the Reusable Raw Water to be delivered as provided for under this Agreement and Metro hereby waives any such warranty or guaranty.

5. **Use of Reusable Raw Water.** Metro's intended place of use of the Reusable Raw Water under this Agreement is on the NTP property. Metro shall have the right to use and reuse to extinction the Reusable Raw Water delivered under this Agreement for irrigation at its NTP property; provided that such use is consistent with the terms of this Agreement and all applicable laws, rules and regulations

6. **Water Rights Accounting.** Metro will be solely responsible for any and all reporting and accounting required by the Colorado State Engineer, the Division Engineer for Water Division 1, the Water Commissioner for Water Commissioner District 2, or any other lawful authority after Aurora makes its delivery of the Reusable Raw Water as provided for under this Agreement. This responsibility includes, but is not limited to, Metro' withdrawal of the Reusable Raw Water from the South Platte River (if any) and Metro' use of the Reusable Raw Water. On a monthly basis, Metro will provide to Aurora the daily accounting of its use of the Reusable Raw Water for the previous month. Aurora will provide any and all reporting and accounting required by the Colorado State Engineer, the Division 1 Engineer, or any other lawful authority concerning proof of the reusability of the Reusable Raw Water and conveyance of the Reusable Raw Water to the Delivery Point.

7. **Subordination Clause.** This Agreement shall be made expressly subordinate to any present or future use of Reusable Raw Water by Aurora for the purposes of augmentation, exchange, or any other use which is or will be of greater direct benefit to Aurora and the users of its water delivery system, as well as to the water supply obligations which Aurora has incurred or will incur from any firm delivery annual agreement or delivery contract of Reusable Raw Water executed prior to the date of this Agreement. This means that should Aurora need the Reusable Raw Water for its citizens and permanent obligations or there is a water crisis, the obligation to deliver all or some portion of the Reusable Raw Water shall be forfeited for that period. Aurora will provide Notice to Metro of its intended subordination pursuant to Paragraph 20(g), below. The foregoing subordination does not, in and of itself, create an excuse for Aurora's failure to deliver the Reusable Raw Water under this Agreement. However, the Parties agree that the purpose and obligations under this Agreement and Aurora's other obligations with respect to its Reusable Raw Water in the event of a *force majeure* event may cause delay or interruption in Aurora's delivery of the Reusable Raw Water.

8. **Consideration.** Metro agrees to pay to Aurora the "Unit Rate" amount of Five Hundred Fifty Dollars (\$550.00) per acre-foot for all Reusable Raw Water delivered under this Agreement up through October 31, 2020. For all Reusable Raw Water to be delivered from November 1, 2020 through October 31, 2021, and for Additional Years, the Unit Rate shall be increased by the same percentage as any increase in Aurora's residential potable water rates.

9. **Payment.**

a. **Amount.** Aurora shall bill for all Reusable Raw Water it will deliver to Metro under this Agreement within thirty (30) days of the Effective Date. For each Additional Year, Aurora

shall bill for all Reusable Raw Water to be delivered during that year within thirty (30) days of Aurora's approval of the Delivery Schedule for that year. In the event the Delivery Schedule is amended mid-year (November 1 through October 31) and delivery of additional Reusable Raw Water is approved, Aurora will bill for the additional Reusable Raw Water to be delivered within thirty (30) days of the approval of the amended Delivery Schedule. Metro is not entitled to a credit if the Delivery Schedule is amended mid-year for an amount of Reusable Raw Water to be delivered that is reduced from the Delivery Schedule approved for that year.

b. **Billing Procedures.** All billing shall be done on such forms as designated by Aurora for that purpose. Payment by Metro shall be due no later than 45 days after such bill has been issued. If Metro does not make the required payment by the due date, Aurora may give Metro a notice of default. If Metro does not cure the default by making full payment within 30 days of receipt of any notice of default, then Aurora, in addition to pursuing any other remedies available to it, may declare this Agreement terminated. Any delay in Aurora's invoicing for payments under this Agreement shall not constitute a breach of Aurora's obligations and shall not relieve Metro of its obligations to pay all consideration due hereunder. If Aurora fails to deliver the entirety of the Reusable Raw Water it is otherwise required to deliver under this Agreement that Metro has paid for, Metro shall be entitled to a credit equal to the Unit Rate multiplied by the volume of such undelivered Reusable Raw Water against the payment due with respect to the next Additional Year except with respect to any such shortfall occurring over the last year of this Agreement in which case Aurora shall reimburse Metro such amount promptly following the termination of this Agreement. This Agreement shall not constitute a multi-year fiscal obligation. This Agreement is subject to annual appropriation. In the event Metro fails to appropriate funds for this Agreement in any given fiscal year, Metro may terminate the Agreement accordingly. Metro is responsible for payment for any water delivered pursuant to the Delivery Schedule prior to termination.

10. **Non-Assignability and No Subleases.** Neither Aurora nor Metro may assign its rights or delegate its duties hereunder without the prior written consent of the other Party. Metro may not sublease the Reusable Raw Water to which it is entitled pursuant to this Agreement without the permission of Aurora, which permission Aurora may grant or withhold at its discretion.

11. **Successors and Assigns.** This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, if any are allowed. The Parties intend that each Party shall not incur any liability other than those liabilities directly running to such Party or its assigns permitted under this Agreement if any.

12. **No Rights Conferred.** Except as otherwise provided in this Agreement, the Parties acknowledge that all Reusable Raw Water provided hereunder is intended for the present and future use of Aurora. It is further understood and agreed to by the Parties that this Agreement shall confer no rights in such Reusable Raw Water upon Metro, nor shall any future needs of Metro for water enable Metro to make claim against Aurora for any of Aurora's Reusable Raw Water, or other water or water rights. Metro further acknowledges the statutory prohibition against vesting of a right as expressed in CRS § 31-35-201 applies in these circumstances.

13. **No Opposition to Aurora Water Court Matters.** From the date of execution of this Agreement through the conclusion hereof, Metro agrees that neither it nor any successors, if any are allowed, will oppose Aurora in any Colorado Water Court applications filed by Aurora except to assert injury to its facilities or operations.

14. **Aurora Right to Request Reuse.** The Parties hereto acknowledge that hydrologic and other conditions may exist wherein Metro may not need all or a portion of the Reusable Raw Water under this Agreement. Aurora may contact Metro, not more frequently than once per day, to determine if any of the Reusable Raw Water provided hereunder will not be needed.

15. **Entire Agreement of the Parties.** This Agreement represents the entire agreement of the Parties and neither Party has relied upon any fact or representation not expressly set forth herein. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants and warranties concerning the subject matter hereof, are merged in this Agreement.

16. **Amendment.** This Agreement may be amended, modified, changed, or terminated in whole or in part only by written agreement duly authorized and executed by the Parties hereto.

17. **Enforcement.** The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including damages, as may be available according to the laws of the State of Colorado. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms hereof, and that any breach hereof resulting in any recoverable damages shall not thereby cause the termination of any obligations created by this Agreement unless such termination is requested by the Party not in breach hereof.

18. **Failure to Perform Due to Force Majeure.** Subject to the terms and conditions in this Paragraph, no Party to this Agreement shall be liable for any delay or failure to perform under this Agreement due solely to conditions or events of *force majeure*, as that term is specifically defined herein; provided that: (a) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the *force majeure*; (b) the suspension of performance is of no greater scope and of no longer duration than is required by the *force majeure* event or condition; and (c) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing the actions taken to remedy the consequences of the *force majeure* event or condition. As used herein *force majeure* shall mean any delay or failure of a Party to perform its obligations under this Agreement caused by events beyond the Party's reasonable control, and without the fault or negligence of the Party, including, without limitation A) changes in state or federal law or administrative practice concerning, water rights administration, water quality or stream flow requirements, B) changes in state water rights administrative practice concerning the reuse of Reusable Raw Water through agreement to others for use at locations other than Aurora, Colorado, including, but not limited to, challenges to retained dominion and control, C) acts of God, D) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, E) sabotage, F) vandalism beyond that which can be reasonably prevented by the Party, G) terrorism, H) war, I) riots, J) fire, K) explosion, L) severe cold or hot weather, M) snow, N) drought [a condition more severe than that which occurred in 2002 in the South Platte River Basin or any basin from which the Reusable Raw Water

originates] O) other extreme weather conditions, P) blockades, Q) insurrection, R) strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); S) actions by federal, state, municipal, or any other government or agency (including but not limited to, the adoption or change in any rule or regulation or environmental constraint imposed by federal, state or local government bodies) but only if such requirements, actions, or failures to act prevent or delay performance, T) inability, despite due diligence, to obtain required licenses, permits or approvals, and, U) changes of law relating to financial obligations, revenues and budgetary matters concerning Colorado local governments and their enterprises. In the event a *force majeure* event or condition prevents Aurora from delivering all or part of the agreed upon amounts of Reusable Raw Water to Metro, Aurora shall refund all advance payments made for that water not delivered within 60 days of the conclusion of the *force majeure* event or the cancellation of the Agreement pursuant to the remaining provisions of this Paragraph. In no event will any delay or failure of performance caused by any conditions or events of *force majeure* extend this Agreement beyond its stated term. In the event any delay or failure of performance on the part of the Party claiming *force majeure* continues for an uninterrupted period of more than 120 days from its occurrence or inception as noticed pursuant to this Paragraph, the Party not claiming *force majeure* may, at any time following the end of such 120 day period, terminate this Agreement upon written notice to the Party claiming *force majeure*, without further obligation except as to costs and balances incurred prior to the effective date of such termination.

19. **Sole Obligation of Utility Enterprise.**

a. This Agreement shall never constitute a general obligation or other indebtedness of the City of Aurora ("City"), or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City.

b. In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Agreement, Metro shall have no recourse for any amounts owed to it against any funds or revenues of the City except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Water Enterprise Fund, as the terms "Water System" and "Water Enterprise Fund" are defined in City Ordinance No. 2003-18, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City.

20. **Miscellaneous.**

a. **Intent of Agreement.** This Agreement is intended to describe the rights and responsibilities of and between the named Parties and is not intended to, and shall not be deemed to confer rights upon any persons or entities not named as Parties, nor to limit in any way the powers and responsibilities of Aurora, Metro, or any other entity not a party hereto.

b. **Effect of Invalidity.** If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either Party or as to both Parties, the entire Agreement will terminate.

c. **Waiver of Breach.** Waiver of breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party of either the same or any other provision of this Agreement.

d. **Multiple Originals.** This Agreement may be simultaneously executed in any number of counterparts, each one of which shall be deemed an original, but all of which constitute one and the same Agreement.

e. **Headings for Convenience.** Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to confine, limit, or describe the scope of intent of any provision of this Agreement.

f. **Recordation.** Following the execution of this Agreement, the Parties may cause this Agreement to be recorded with the Clerk and Recorder's Office of such county or counties in Colorado as they may desire.

g. **Notice.**

(1) All notices, requests, demands, or other communications (collectively, "Notices") hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records requiring a signed receipt, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address as the Parties may designate by Notice in the above manner.

To Aurora:           City of Aurora  
15151 East Alameda Parkway, Suite 3600  
Aurora, CO 80012-1555  
Attn: Director, Aurora Water

with copy to       City of Aurora  
15151 East Alameda Parkway, Suite 5300  
Aurora, CO 80012-1555  
Attn: City Attorney

To Metro:           Metro Wastewater Reclamation District  
6450 York Street  
Denver, Colorado 80229  
Attn: Emily Jackson

with copy to       Petros & White  
1999 Broadway, Suite 3200  
Denver, CO 80202  
Attn: David Hayes

Notices shall be effective (iv) the next day following the date sent by an established express delivery service which maintains delivery records requiring a signed receipt, (v) upon receipt by the addressee of a hand delivery, or (vi) three (3) days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested.

(2) Notwithstanding the foregoing, the Parties may communicate with respect to the Delivery Schedule and miscellaneous matters by e-mail as follows: (i) to Aurora to John Murphy at [jmurphy@auroragov.org](mailto:jmurphy@auroragov.org); and (ii) to Metro to Mickey Conway at [Mconway@mwr.dst.co.us](mailto:Mconway@mwr.dst.co.us) or such other e-mail address as other address as the Parties may designate by Notice in the manner provided for under Paragraph 20(g)(1) above.

h. **Non-Business Days.** If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

i. **Commissions and Fees.** Each Party shall be solely responsible for the payment of any and all real estate commissions or other commissions or fees that it incurs with respect to this Agreement.

j. **Governing Law and Venue.** This Agreement and its application shall be construed in accordance with the law of the State of Colorado. Should it be necessary to initiate court proceedings concerning this Agreement, the Parties agree that venue shall be in the District Court for Arapahoe County, Colorado.

k. **No Attorneys' Fees.** In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of or related to this Agreement each Party agrees to be responsible for its own attorneys' and other professional fees, costs and expenses associated with any such proceedings.

l. **No Construction Against Drafter.** This Agreement was drafted by Aurora with review and comment from the attorney for Metro. Accordingly, the Parties agree the legal doctrine of construction against the drafter will not be applied should any dispute arise concerning this Agreement.

21. **Effective Date.** The "Effective Date" of this Agreement shall be the date it is signed by all Parties.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

*[signatures on following pages]*

CITY OF AURORA, COLORADO,  
ACTING BY AND THROUGH ITS  
UTILITY ENTERPRISE

*Mike Coffman*  
Mike Coffman, Mayor

06/30/2020  
Date

ATTEST:

*Stephen J. Ruger*  
Stephen J. Ruger, City Clerk

6/30/20  
Date

APPROVED AS TO FORM FOR AURORA:

*Stephanie Neitzel*  
Stephanie Neitzel, Assistant City Attorney

4/8/2020      ACS #  
Date

STATE OF COLORADO    )  
  ) ss  
COUNTY OF ARAPAHOE )

The foregoing instrument was acknowledged before me this 30th day of JUNE, 2020,  
by Mike Coffman, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora,  
Colorado.

Witness my hand and official seal. *Cheryl Lee Daniels*  
Notary Public

My commission expires: 5-23-2021

(SEAL) 

Cheryl Lee Daniels Notary Public State of Colorado Notary ID 20014011257 My Commission Expires May 23, 2021
---



THE METRO WASTEWATER RECLAMATION DISTRICT

WJ Conroy  
Name: William Conroy  
Title: District Manager

7/1/2020  
Date

ATTEST:

\_\_\_\_\_  
Date

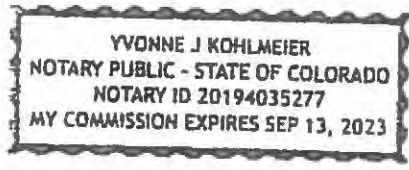
STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF Adams )

The foregoing Agreement was acknowledged before me this 1<sup>st</sup> day of July, 2020, by William J. Conroy, District Manager of the Metro Wastewater Reclamation District.

Witness my hand and official seal. Yvonne J. Kohlmeier  
Notary Public

My commission expires: September 13, 2023

(SEAL)





# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Appointing Directors to the Murphy Creek Metropolitan District No. 3 Board of Directors
<b>Item Initiator:</b> Jacob Cox, Manager, Office of Development Assistance
<b>Staff Source/Legal Source:</b> Jacob Cox, Manager, Office of Development Assistance/ Brian Rulla, Assistant City Attorney II
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 6.0--Provide a well-managed and financially strong City

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO APPOINTING DIRECTORS TO THE BOARD OF DIRECTORS OF MUPHY CREEK METROPOLITAN DISTRICT NO. 3

Staff is requesting a waiver of reconsideration due to the need of the District to appoint board members prior to the end of the year.

Sponsor: Steve Sundberg, Council Member

Jacob Cox, Manager, Office of Development Assistance / Brian Rulla, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

The Murphy Creek No. 3 Metropolitan District was formed in 2016. The District is located at the southwest corner of S. Harvest Road and E. Mississippi Avenue.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

The Murphy Creek Metropolitan District No. 3 is requesting that City Council appoint 3 members to their Board of Directors prior to the end of the year in order to continue operations. The vacancies are due to the oaths of office for the Board not being filed by the required date.

---

**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

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**QUESTIONS FOR COUNCIL**

Does Council wish to approve this Resolution?

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**LEGAL COMMENTS**

The City Council, as governing body of the city, may appoint directors to a metropolitan district when there are no duly elected directors, and when the failure to appoint a new board may result in the interruption of services that are being provided by the district. (Colo. Rev. Stat. §32-1-905(2.5)).

Motion to approve shall include a waiver of reconsideration.

(Rulla)

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RESOLUTION NO. R2023-\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO  
APPOINTING DIRECTORS TO THE BOARD OF DIRECTORS OF MURPHY CREEK  
METROPOLITAN DISTRICT NO. 3

WHEREAS, Murphy Creek Metropolitan District No. 3 (the “District”) is a special district located wholly within the City of Aurora, Colorado (the “City”) operating under a Model Service Plan approved by the City Council of the City (the “City Council”) on August 8, 2016 by Resolution No. R2016-58 (the “Service Plan”); and

WHEREAS, the board of directors for the District is entirely vacant, and the District is unable to take any formal action; and

WHEREAS, the City Council is authorized to appoint directors to a special district’s board of directors if the special district’s board of directors is entirely vacant and the failure to appoint a new board will result in the interruption of services that are provided by the district, pursuant to § 32-1-905(2.5), C.R.S.; and

WHEREAS, the City Council has received requests for appointment to the District’s board of directors from qualified individuals who are eligible electors within the District; namely Doug Shriner, Richard Berge, and Bob Gaiser (the “Proposed Directors”); and

WHEREAS, the City Council finds that appointment of the Proposed Directors will facilitate the District’s compliance with local government laws and allow the District to resume services as contemplated by the District’s Service Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. In accordance with § 32-1-905(2.5), C.R.S., the following individuals are appointed to serve on the board of directors of the District for the terms specified:

- |               |  |
|---------------|--|
| Doug Shriner  | Appointed to fill vacancy and to serve until the next special district regular election in May 2027. |
| Richard Berge | Appointed to fill vacancy and to serve until the next special district regular election May 2027.    |
| Bob Gaiser    | Appointed to fill vacancy and to serve until the next special district regular election May 2027.    |

Section 2. All prior resolutions or any parts thereof, to the extent that they are inconsistent with this Resolution, are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

 RLA

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

**From:** Paul Rufien <[paul@rufienlaw.com](mailto:paul@rufienlaw.com)>  
**Date:** December 5, 2023 at 1:18:45 PM MST  
**To:** "Sundberg, Steve" <[Steve.Sundberg@auroragov.org](mailto:Steve.Sundberg@auroragov.org)>  
**Subject:** Murphy Creek Metropolitan District No. 3

**This Message Is From an Untrusted Sender**  
You have not previously corresponded with this sender.  
Report Suspicious

Councilman Sundberg,

I am general counsel to the Murphy Creek Metropolitan District No. 3. In that capacity, I am asking for your assistance to spearhead the immediate appointment of representatives to the District board of directors by the City.

Through a "perfect storm" series of administrative errors that occurred due to a transition of management and legal representation, necessary actions were not taken to finalize the requirements of the current board members to serve on the board. I am happy to provide as much detail as you would like, or as any other City representative may like, the very short story is that due to transitions both in management companies and in personnel within the management company, oaths of office were not timely filed as required. Candidly, that situation was exacerbated by my own failure of oversight to ensure full compliance. While there are legal arguments that could be raised that the board members are validly serving, these board members wish to avoid any degree of uncertainty and avail themselves of the assistance of the City.

It is most important to note that none of the three board members (there are two vacancies due to death and resignation), have any responsibility in these administrative shortcomings. These board members were properly elected after an uncontested election, were serving the board prior to the May 2023 election through prior uncontested elections or appointments, and at all times have acted in good faith and in the interests of the District. It is imperative that any question regarding board composition be resolved expeditiously. As you know, this is budget season, and the District's budget must be adopted. Further, the District has been exploring a unique refinancing opportunity that must be acted upon quickly. And, finally, the District is involved in litigation that requires the representation of these knowledgeable and actively involved board members.

C.R.S. 32-1-905(2.5) states: **If there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the district**, then the board of county commissioners of the county or counties which approved the organizational petition may appoint all directors from the pool of duly qualified, willing candidates. The board appointed pursuant to this subsection (2.5) shall call for nominations for a special election within six months after their appointment, which special election is to be held in accordance with section 32-1-305.5 and article 13.5 of title 1; except that the question of the organization shall not be presented at the election. **In the event a district is wholly within the boundaries of a municipality, the governing body of the municipality may appoint directors.**

The District wishes to avail itself of this process and have the City appoint the three existing board members to continue their fiduciary service to the District. Those board members are Doug Schriener, Richard Berge and Bob Gaiser. Any of these gentlemen will make themselves available to you or any other City official to discuss their qualifications and commitment to serve. I, of course, will make myself available to assist in any way possible.

I, and the District, appreciate your assistance. We will do all that is necessary to quickly address this matter and have the board definitively appointed. Please let me know what you need as a next step.

--Paul Rufien

CONFIDENTIALITY NOTICE: This electronic mail message and any attachments may be confidential and/or subject to the attorney-client privilege and other privileges. This message is intended only for use by the person(s) or entity named above. If you are not the intended recipient(s) or a representative of the intended recipient(s), then you are PROHIBITED from disclosing, copying, using, or disseminating any information in this message or its attachments.





# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> An Intergovernmental Agreement (IGA) Between Aurora and ARTA for the Transfer of Tower MD Mill Levy Funds (Resolution)
<b>Item Initiator:</b> Jacob Cox, Manager of Development Assistance
<b>Staff Source/Legal Source:</b> Jacob Cox, Manager of Development Assistance / Brian Rulla, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 5.0--Be a great place to locate, expand and operate a business and provide for well-planned growth and development

### COUNCIL MEETING DATES:

**Study Session:** 12/11/2023

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Jacob Cox, Manager of Development Assistance / Brian Rulla, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

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**Action Taken/Follow-up: (Check all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

---

**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

ARTA was organized in accordance with the RTA Law and pursuant to the Intergovernmental Agreement Among the Board of County Commissioners of the County of Adams, the City of Aurora and the Aerotropolis Area Coordinating Metropolitan District Establishing the Aerotropolis Regional Transportation Authority dated February 27, 2018, as supplemented by a first supplement last executed July 8, 2021, and as may be further amended and **supplemented from time to time (the "Establishing Agreement")**, for the general purposes of constructing, or causing to be constructed, a Regional Transportation System as set forth in the Capital Plan of the Establishing Agreement generally to serve the regional transportation infrastructure needs of the area surrounding Denver International Airport.

The Tower Metropolitan District ("Tower MD") was formed pursuant to the Special District Act, Article 1 of Title 32, C.R.S., as amended from time to time (the "Special District Act"), by order and decree of the District Court of Adams County on March 5, 1980, and operates pursuant to its service plan dated July 1, 2019, and approved by the City of Aurora City Council on October 7, 2019, as the same may be amended from time to time (the "Tower MD Service Plan"), and is located in the City of Aurora and Adams County adjacent to the boundaries of ARTA.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

The Tower MD Service Plan requires Tower MD to impose an ARI Mill Levy, and, because Tower MD did not execute an ARI Authority Establishment Agreement (as defined in the Tower MD Service Plan) or execute an intergovernmental agreement with the City of Aurora within two years of the date of the approval of the Tower MD Service Plan by the City, which two-year deadline passed on October 7, 2021; the Tower MD Service Plan therefore requires Tower MD to convey the revenue from the ARI Mill Levy to the City for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements (as defined in the Tower MD Service Plan) which benefit the service users or taxpayers of Tower MD as prioritized and determined by the City.

The City has determined to utilize the revenues from Tower MD's ARI Mill Levy to support the planning, design, and construction of ARTA's Regional Transportation System, as further set forth in the Intergovernmental Agreement and the Parties desire to enter into the IGA in order to set forth their mutual understanding regarding the process by which the City will collect and transfer to ARTA the revenues derived from the Tower MD ARI Mill Levies, consistent with the provisions of the Tower MD Service Plan.

---

**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Revenue Impact  | <input type="checkbox"/> Budgeted Expenditure Impact | <input type="checkbox"/> Non-Budgeted Expenditure Impact |
| <input type="checkbox"/> Workload Impact | <input checked="" type="checkbox"/> No Fiscal Impact |  |

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

Only impacts the commercial properties located within the District.

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**


Does Council approve of the Resolution for the IGA between the City of Aurora and ARTA for the Transfer of Tower Metro District Mill Levy Funds?

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**LEGAL COMMENTS**

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)

**Legend**

-  Aerotropolis RTA
-  The Aurora Highlands Sub Boundary

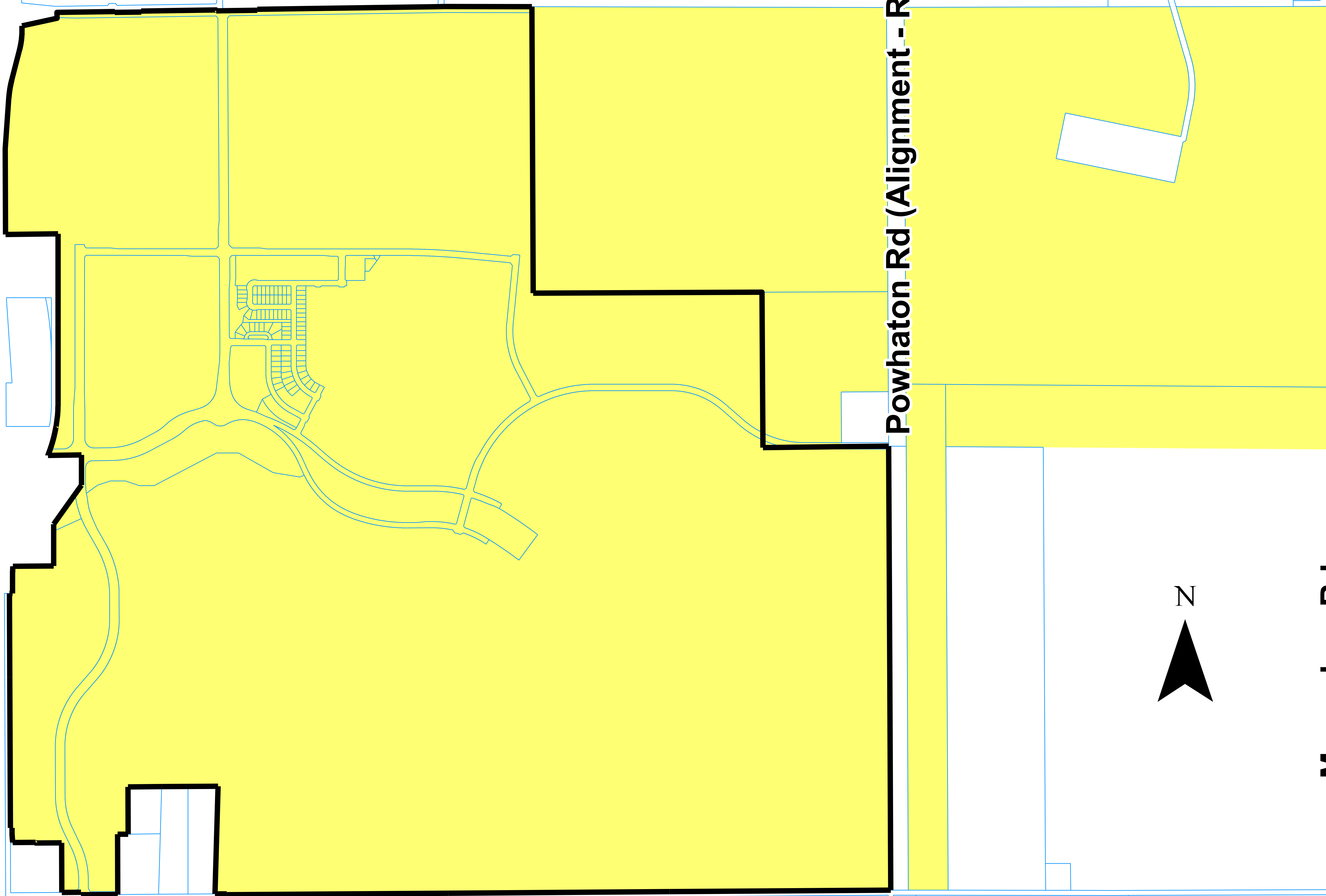
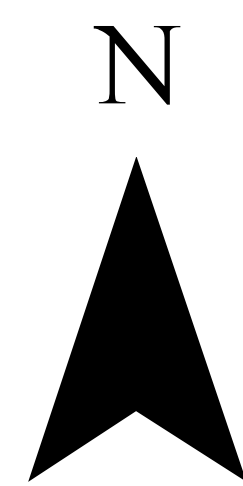
**48thAve**

**E-470**

**26thAve**

**Powhatan Rd (Alignment - ROW?)**

**Monaghan Rd**



**INTERGOVERNMENTAL AGREEMENT THE CITY OF AURORA, COLORADO AND  
THE AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY REGARDING  
TRANSFER OF ARI MILL LEVIES  
(Tower Metropolitan District)**

This INTERGOVERNMENTAL AGREEMENT REGARDING TRANSFER OF ARI MILL LEVIES (Tower Metropolitan District) (this “**Agreement**”) is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2023, (the “**Effective Date**”), by and among the **CITY OF AURORA, COLORADO**, a home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas (the “**City**”), and the **AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY**, a political subdivision and body corporate of the State of Colorado formed pursuant to the Regional Transportation Authority Law, Sections 43-4-601, *et seq.*, C.R.S. (“**RTA Law**”) (“**ARTA**,” or the “**Authority**”). The City and ARTA are referred to collectively herein as the “**Parties**” and individually as a “**Party**.”

**RECITALS**

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

B. ARTA was organized in accordance with the RTA Law and pursuant to the Intergovernmental Agreement Among the Board of County Commissioners of the County of Adams, the City of Aurora and the Aerotropolis Area Coordinating Metropolitan District Establishing the Aerotropolis Regional Transportation Authority dated February 27, 2018, as supplemented by a first supplement last executed July 8, 2021, and as may be further amended and supplemented from time to time (the “**Establishing Agreement**”), for the general purposes of constructing, or causing to be constructed, a Regional Transportation System as set forth in the Capital Plan of the Establishing Agreement generally to serve the regional transportation infrastructure needs of the area surrounding Denver International Airport (any capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Establishing Agreement).

C. The Tower Metropolitan District (“**Tower MD**”) was formed pursuant to the Special District Act, Article 1 of Title 32, C.R.S., as amended from time to time (the “**Special District Act**”), by order and decree of the District Court of Adams County on March 5, 1980, and operates pursuant to its service plan dated July 1, 2019, and approved by the City of Aurora City Council on October 7, 2019, as the same may be amended from time to time (the “**Tower MD Service Plan**”), and is located in the City of Aurora and Adams County adjacent to the boundaries of ARTA.

D. The Tower MD Service Plan requires Tower MD to impose an ARI Mill Levy (as used herein, “**ARI Mill Levy**,” or “**ARI Mill Levies**,” having the meaning set forth in the Tower MD Service Plan), and, because Tower MD did not execute an ARI Authority Establishment Agreement (as defined in the Tower MD Service Plan) or execute an intergovernmental agreement with the City within two years of the date of the approval of the Tower MD Service Plan by the

City, which two-year deadline passed on October 7, 2021, the Service Plan further requires Tower MD to convey the revenue from the ARI Mill Levy to the City for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements (as defined in the Tower MD Service Plan) which benefit the service users or taxpayers of Tower MD as prioritized and determined by the City.

E. The City has determined to utilize the revenues from Tower MD's ARI Mill Levy to support the planning, design, and construction of ARTA's Regional Transportation System, as further set forth herein.

F. The Parties desire to enter into this Agreement in order to set forth their mutual understanding regarding the process by which the City will collect and transfer to ARTA the revenues derived from the Tower MD ARI Mill Levies, consistent with the provision of the Tower MD Service Plan, together with such other matters, all as further set forth herein.

## AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the foregoing recitals which are incorporated herein as though fully set forth below, the Parties agree as follows:

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

2. Collection and Transfer of Tower MD ARI Mill Levies. The City agrees that it will, consistent with the requirements of the Tower MD Service Plan and subject to annual budget and appropriations, (1) within ninety (90) days of the Effective Date, transfer to ARTA any and all revenues previously collected by the City from the Tower MD ARI Mill Levies prior to the Effective Date, and (2) commencing on the Effective Date through the term of this Agreement, collect all revenues derived from the Tower MD ARI Mill Levies and transfer such revenues to ARTA within sixty (60) days of the City's receipt (the "**Tower MD ARI Mill Levy Revenues**"). The Tower MD ARI Mill Levy Revenues shall be transferred to ARTA without the imposition of any costs, fees or other set off by the City.

3. Use of Tower MD ARI Mill Levy Revenues and Accounting. ARTA may utilize the Tower MD ARI Mill Levy Revenues for any and all lawful purposes, including but not limited to the planning, designing, constructing, installing, acquiring, relocating, redeveloping and/or financing the Regional Transportation System ("**ARTA Costs**"). ARTA expressly agrees the Tower MD ARI Mill Levy Revenues shall only be used for the limited purpose of funding actual ARTA Costs. ARTA shall maintain or cause to be maintained full and complete records of actual ARTA Costs incurred and funds committed and expended by ARTA for actual ARTA Costs in accordance with generally accepted accounting principles. The City shall have the right to audit ARTA's financial records during the Term of the Tower MD ARI Mill Levy Revenues and three (3) years subsequent to the Term of the Agreement.

4. Transfer Methods. The transfers of funds between the Parties required by this Agreement may be accomplished by any means mutually agreeable to the applicable Parties from time to time.

5. Enforcement of Tower MD Service Plan. The City agrees in good faith from time to time to exercise any and all rights and remedies available to the City as may be necessary to ensure Tower MD's compliance with the Towner MD Service Plan in order to further the purposes of this Agreement, including but not limited to enforcing Tower MD's obligations to impose the ARI Mill Levies and remit the revenues derived therefrom to the City as required by the Tower MD Service Plan, and to secure the Tower MD ARI Mill Levy Revenues on behalf of the City and ARTA. Nonetheless, ARTA agrees that the City will not be in breach or default of this Agreement if Tower MD ARI Mill Levy Revenues are not remitted to the City by Tower MD, so long as the City in good faith requests Tower MD comply with its' mill levy requirements of its' service plan. Additionally, nothing in this Agreement is intended to create or does create any additional financial obligation, or obligation otherwise, by the City to provide ARTA with alternative or equivalent funds if the Tower MD ARI Mill Levy Revenues are not remitted to the City by Tower MD.

6. Term. This Agreement shall be effective as of the Effective Date set forth above and shall terminate upon the earlier to occur of, (1) the expiration of the Tower MD ARI Mill Levies consistent with the Tower MD Service Plan, or (2) the termination of the Establishing Agreement on its terms and final dissolution of ARTA.

7. Record Keeping. ARTA shall keep accurate records of the use of the Tower MD ARI Mill Levy Revenues and shall provide status reports to the City upon reasonable request by the City, including progress updates, financial projections, and notice of any anticipated or unanticipated delays related to the use of the Tower MD ARI Mill Levy Revenues. Said status reports shall include updates to the Tower MD ARI Mill Levy Revenues expended and the remaining projected use to be expended through each calendar year following receipt of the Tower MD ARI Mill Levy Revenues by ARTA.

8. Default/Remedies. In the event of a material breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity after the provision of thirty (30) days' prior written notice of the alleged breach or default to the other Party, provided, the Parties waive any claims against each other for consequential damages arising out of or relating to this Agreement, as between the Parties, including, but not limited to, special, incidental, consequential, or punitive damages of any kind arising out of or related to the performance or non-performance of the Agreement, and regardless of whether such losses, damages or liability arises from breach of contract or warranty, tort (including negligence), strict liability or otherwise. In the event of any litigation, arbitration or mediation to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

9. Notices and Communications. All notices, statements, demands, requirements, approvals or other communications and documents ("**Communications**") required or permitted to be given, served, or delivered by or to any Party or any intended recipient under this Agreement

shall be in writing and shall be given to the applicable address set forth below (“**Notice Address**”). Communications to a Party shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such Party’s Notice Address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Party to whom notice is given at such Party’s Notice Address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the Party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such Party at such Party’s Notice Address; or (iv) on the date and at the time shown on the facsimile or electronic mail message if telecopied or sent electronically to the number or address designated in such Party’s Notice Address and receipt of such telecopy or electronic mail message is electronically confirmed. The Notice Addresses for each Party are as follows:

If to ARTA:                      Aerotropolis Regional Transportation Authority  
    c/o CliftonLarsonAllen  
    Attention: Lisa Johnson  
    8390 E. Crescent Parkway, Suite 300  
    Greenwood Village, Colorado 80111  
    Phone: (303) 779-4525  
    Email: Anna.Jones@claconnect.com

With copies to:                      Spencer Fane LLP  
    Attention: Tom George  
    1700 Lincoln Street, Suite 2000  
    Denver, Colorado 80203  
    Phone: (303) 839-3800  
    Email: tgeorge@spencerfane.com

If to City:                              City of Aurora Finance Department  
    Attention: Terri Velasquez, Director  
    15151 E. Alameda Parkway, Suite 5700  
    Aurora, Colorado 80012  
    Phone: (303)739-7780  
    Email: rgermerot@auroragov.org

With copies to:                      City of Aurora, City Attorney’s Office  
    15151 E. Alameda Parkway, Suite 5300  
    Aurora, Colorado 80012  
    Phone: (303)739-7030



10. Covenant of Good Faith and Fair Dealing. The Parties agree to act in good faith in dealing with one another, carrying out their responsibilities, and performing their obligations pursuant to this Agreement. Each Party hereby covenants to the other that it shall not undermine the rights or obligations of the other Party hereto with respect to the Agreement and it will cooperate with the other in achieving the purposes of this Agreement.

11. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

12. Entire Agreement; Amendments; Headings for Convenience Only; Not to be Construed Against Drafter; No Implied Waiver. This Agreement, along with the Establishing Agreement and the Tower MD Service Plan as referenced and incorporated herein, constitutes the entire agreement among the Parties hereto pertaining to the subject matter hereof. No change or addition is to be made to this Agreement except by written amendment executed by the Parties. The headings, captions and titles contained in this Agreement are intended for convenience of reference only and are of no meaning in the interpretation or effect of this Agreement. This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by one of the Parties or its counsel, since all Parties have contributed substantially and materially to the preparation hereof. No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by the other Party, shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

13. Governing Law. This Agreement is entered into in Colorado and shall be construed and interpreted under the law of the State of Colorado without giving effect to principles of conflicts of law which would result in the application of any law other than the law of the State of Colorado.

14. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.

15. Assignment; Binding Effect. No Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in each Party's sole and absolute discretion; provided, however, ARTA may assign this Agreement, in whole or in part, to a trustee or other third party as may be necessary to allow ARTA to utilize the Tower MD ARI Mill Levy Revenues to support ARTA's bonds or other financial obligations, and the City hereby consents to the same. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted assigns.

16. No Multi-Fiscal Year Obligation; Annual Appropriations. This Agreement does not create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Parties. Any and all financial obligations of the Parties described hereunder are subject to annual budget and appropriations requirements of applicable law.

17. Counterparts; Copies of Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. This Agreement may be executed and delivered by electronic means, and execution and delivery of the signature page by such methods will be deemed to have the same effect as if the original signature had been delivered to the other Party.

18. Time of the Essence. Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions of this Agreement, subject to any specific time extensions set forth herein.

19. Computation of Time Periods. All time periods referred to in this Agreement shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a national holiday.

20. No Waiver of Governmental Immunity. Nothing in this Agreement shall be deemed a waiver of any protections afforded the Parties pursuant to Colorado law, including but not limited to, the Colorado Governmental Immunity Act and City Ordinances.

21. Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to any person or entity other than the Parties, including but not limited to Tower MD, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties.

22. No Personal Liability. No elected official, director, officer, agent or employee of either Party shall be charged personally or held contractually liable by or under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

*[remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Intergovernmental Agreement Regarding Transfer of ARI Mill Levies (Tower Metropolitan District) effective as of the Effective Date first set forth above.

**AEROTROPOLIS REGIONAL  
TRANSPORTATION AUTHORITY,**  
a political subdivision and body corporate of the  
State of Colorado formed pursuant to C.R.S. Section 43-4-601

\_\_\_\_\_  
Matthew Hopper, President

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Secretary

**CITY OF AURORA, COLORADO**  
a home rule municipal corporation  
of the Counties of Adams, Arapahoe and Douglas

\_\_\_\_\_  
Mike Coffman, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Kadee Rodriguez, City Clerk

Approved as to legal form:

\_\_\_\_\_  
Brian Rulla, Assistant City Attorney

# Tower Metropolitan District



RESOLUTION NO. R2023- \_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA,  
COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT  
BETWEEN CITY OF AURORA AND AEROTROPOLIS REGIONAL  
TRANSPORTATION AUTHORITY (ARTA) REGARDING TRANSFER OF  
ARI MILL LEVIES (Tower Metropolitan District)

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

WHEREAS, the Aerotropolis Regional Transportation Authority (“ARTA”) was organized in accordance with the RTA Law and pursuant to the Intergovernmental Agreement Among the Board of County Commissioners of the County of Adams, the City of Aurora and the Aerotropolis Area Coordinating Metropolitan District Establishing the Aerotropolis Regional Transportation Authority dated February 27, 2018, as supplemented by a first supplement last executed July 8, 2021, and as may be further amended and supplemented from time to time (the “Establishing Agreement”), for the general purposes of constructing, or causing to be constructed, a Regional Transportation System as set forth in the Capital Plan of the Establishing Agreement generally to serve the regional transportation infrastructure needs of the area surrounding Denver International Airport; and

WHEREAS, the Tower Metropolitan District (“Tower MD”) was formed pursuant to the Special District Act, Article 1 of Title 32, C.R.S., as amended from time to time (the “Special District Act”), by order and decree of the District Court of Adams County on March 5, 1980, and operates pursuant to its service plan dated July 1, 2019, and approved by the City of Aurora City Council on October 7, 2019, as the same may be amended from time to time (the “Tower MD Service Plan”), and is located in the City of Aurora and Adams County adjacent to the boundaries of ARTA; and

WHEREAS, the Tower MD Service Plan requires Tower MD to impose an ARI Mill Levy (as used herein, “ARI Mill Levy,” or “ARI Mill Levies,” having the meaning set forth in the Tower MD Service Plan), and, because Tower MD did not execute an ARI Authority Establishment Agreement (as defined in the Tower MD Service Plan) or execute an intergovernmental agreement with the City of Aurora (“City”) within two years of the date of the approval of the Tower MD Service Plan by the City, which two-year deadline passed on October 7, 2021; and

WHEREAS, the Tower MD Service Plan further requires Tower MD to convey the revenue from the ARI Mill Levy to the City for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements (as defined in the Tower MD Service Plan) which benefit the service users or taxpayers of Tower MD as prioritized and determined by the City; and

WHEREAS, the City has determined to utilize the revenues from Tower MD’s ARI Mill Levy to support the planning, design, and construction of ARTA’s Regional Transportation System, as further set forth in the Intergovernmental Agreement (“IGA”); and

WHEREAS, the Parties desire to enter into the IGA in order to set forth their mutual understanding regarding the process by which the City will collect and transfer to ARTA the revenues derived from the Tower MD ARI Mill Levies, consistent with the provisions of the Tower MD Service Plan; and

WHEREAS, on November 17, 2023, ARTA’s Board approved of the IGA, contingent upon Aurora City Council’s approval; and

WHEREAS, the City Council is authorized by City Charter 10-12 to enter into this type of agreement; and

WHEREAS, the Aurora City Council finds and determines that it is in the best interest of the City and its residents to approve the IGA Between the City and ARTA Regarding Transfer of ARI Mill Levies (Tower Metropolitan District).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The IGA Between the City and ARTA Regarding Transfer of ARI Mill Levies (Tower Metropolitan District) is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the IGA on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
*Michelle Gardner*  
MICHELLE GARDNER, Sr. Assistant City Attorney



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Resolution to Approve National Integrated Ballistic Information Network MOU
<b>Item Initiator:</b> Danelle Carrel, Support Specialist Supervisor
<b>Staff Source/Legal Source:</b> Sean Mitchell, Police Lieutenant / Megan Platt, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 1.0--Assure a safe community for people

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Memorandum of Understanding between the Bureau of Alcohol, Tobacco, Firearms, and Explosives and the Aurora Police Department Regarding the National Integrated Ballistic Information Network

Sean Mitchell, Police Lieutenant / Megan Platt, Assistant City Attorney

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### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting
  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

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### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A



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**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval
- Forwarded Without Recommendation  Minutes Not Available
- Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

This Memorandum of Understanding (MOU) is entered into by the U.S. Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the AURORA POLICE DEPARTMENT, hereinafter collectively referred to as “the parties,” and the AURORA POLICE DEPARTMENT, referred to as the “NIBIN Partner.” This MOU establishes and defines a partnership between the parties that will result in an ATF National Integrated Ballistic Information Network (NIBIN) system installation, operation, and administration for the collection, timely analysis, and dissemination of crime gun data to enhance the efforts of law enforcement to integrate resources to reduce firearms violence, identify shooters, and refer them for prosecution.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to “Questions for Council”)

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact
- Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

[Empty rectangular box]

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**QUESTIONS FOR COUNCIL**

Does Council approve the agreement?

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**LEGAL COMMENTS**

City Council may, by resolution, enter Into Intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter §10-12). (Platt)



# CITY OF AURORA

## Late Submission Approval for Agenda Item

Item Title: National Integrated Ballistic Information Network MOU
Item Initiator: Danelle Carrel, Support Specialist Supervisor
Staff Source/Legal Source: Sean Mitchell, Police Lieutenant / Megan Platt, Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 1.0--Assure a safe community for people

CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:

- There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date
- The delay will result in an adverse financial impact to the city
- The item is related to a disaster and must be addressed before the next available meeting

COUNCIL MEETING DATES FOR LATE SUBMISSION:

Study Session: N/A

Regular Meeting: 12/18/2023

EXPLANATION: *(Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)*

The MOU outlines the requirements that we must adhere to including establishing internal policies regarding evidence collection, timely turnaround after evidence is collected (24-48hrs), follow-up on NIBIN leads, and maintaining open lines of communication with the ATF and NNCTC.

I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

Danelle Carrel

Agenda Item Initiator Name

Jason Batchelor

Late Submission Approver Name (Deputy City Manager)

**D Carrel**

12/7/23

Agenda Item Initiator Signature

Date

**Jason Batchelor**

12-07-23

Late Submission Approver Signature

Date

## **MEMORANDUM OF UNDERSTANDING**

Between the Bureau of Alcohol, Tobacco, Firearms and Explosives and the  
AURORA POLICE DEPARTMENT

Regarding the National Integrated Ballistic Information Network

This Memorandum of Understanding (MOU) is entered into by the U.S. Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the AURORA POLICE DEPARTMENT, hereinafter collectively referred to as “the parties,” and the AURORA POLICE DEPARTMENT, referred to as the “NIBIN Partner.” This MOU establishes and defines a partnership between the parties that will result in an ATF National Integrated Ballistic Information Network (NIBIN) system installation, operation, and administration for the collection, timely analysis, and dissemination of crime gun data to enhance the efforts of law enforcement to integrate resources to reduce firearms violence, identify shooters, and refer them for prosecution.

### **AUTHORITY**

This MOU is established pursuant to the authority of the participants to engage in activities related to the investigation and suppression of violent crimes involving firearms. ATF’s authorities are set forth in Title 28, Code of Federal Regulations, sections 0.130-0.131, and include the power to investigate violations of the Gun Control Act of 1968 (as amended), Title 18, United States Code, Chapter 44.

### **BACKGROUND**

The ATF NIBIN Program uses sophisticated technology to compare images of ballistic evidence. It is part of an integrated investigative approach to reduce firearms violence and improve crime gun intelligence. Through aggressive targeting, investigation, and prosecution of shooters and their sources of crime guns, Federal, State, tribal, and local law enforcement agencies work in concert to combat firearms-related violence.

### **SCOPE**

Participation in this program is expressly restricted to the sharing of ballistic imaging of firearms data associated with crimes recovered by any law enforcement agency in the United States and international law enforcement partners who have entered into agreements with ATF to share ballistic data. ATF may work with our international law enforcement partners to search their networks in an effort to identify a crime gun in their database against a crime gun in ATF’s NIBIN network.

NIBIN systems are to be used to image ballistic evidence and test fires of firearms illegally possessed, used in a crime, or suspected by law enforcement officials of having been used in a crime. Ballistics information and/or evidence from firearms taken into law enforcement custody through a gun buy-back program, property damage crimes involving firearms, found or abandoned firearms, and domestic disturbances are also permitted to be entered in the NIBIN system.

Any NIBIN unit, whether ATF-owned or site-purchased, will not be used to capture, share, or store ballistic images acquired at the point of manufacture, importation, or sale of a firearm, or images of law enforcement-issued firearms not associated with crimes. The NIBIN system does not store information related to firearms owners or registration.

### **APPLICABLE LAWS**

The applicable statutes, regulations, directives, and procedures of the United States, DOJ, and ATF shall govern this MOU and all documents and actions pursuant to it. Nothing in this MOU will prevail over any Federal law, regulation, or other Federal rule recognized by ATF. Notwithstanding the foregoing, nothing in this agreement will be construed as a waiver of sovereign immunity in excess of or beyond that which is authorized by the law of the NIBIN Partner's jurisdiction. This MOU is not a funding document. All specific actions agreed to herein shall be subject to funding and administrative or legislative approvals.

### **MODIFICATIONS AND TERMINATIONS**

This MOU shall not affect any pre-existing or independent relationships or obligations between the parties. If any provision of this MOU is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

Except as provided herein, this MOU may be modified or amended only by written mutual agreement of the parties. Either party may terminate this MOU by providing written notice to the other party. The termination shall be effective upon the thirtieth calendar day following provision of notice, unless an alternative date is agreed upon.

If either party terminates this MOU, ATF will retain its interest in the electronically stored information contained in the database and any ATF-deployed NIBIN system. ATF agrees to provide to the NIBIN Partner an electronic copy of the data collected by the NIBIN Partner, subject to Federal law and regulation.

### **LIABILITY**

The NIBIN Partner hereby agrees to assume full and sole liability for any damage, injury, or harm of any sort caused by the operation and use of any NIBIN system or related to the use and interpretation of any information contained in, processed by, or extracted from any database subject to this agreement and the protocols and procedures of the NIBIN Program, to the extent allowed by law.

The rights and obligations set out in this MOU run between the signatories. Nothing in this MOU is intended to create any substantive or procedural rights, privileges, or benefits enforceable in any administrative, civil, or criminal matter by any prospective or actual third-parties.

### **ATF-DEPLOYED SYSTEM INSTALLATION**

The NIBIN Partner hereby agrees and acknowledges that all ATF-deployed NIBIN systems shall remain the property of ATF and the U.S. Government. ATF agrees to provide, install, and maintain all ATF-deployed NIBIN systems for use by the NIBIN Partner and any other law enforcement agencies served by or in partnership with the NIBIN Partner. Should the installation of the NIBIN system require physical construction at the site, the NIBIN Partner will be responsible for such construction and any associated costs. If a system is to be moved to allow additional access outside of a laboratory, ATF will work with the NIBIN Partner to ensure the appropriate protocols are put into place to ensure the integrity of crime gun evidence along with maximum use of the equipment.

### **ATF-DEPLOYED SYSTEM MAINTENANCE**

ATF will maintain all ATF-deployed NIBIN systems furnished to the NIBIN Partner and repair or replace inoperable or outdated systems in an expeditious manner, subject to availability and funding. However, maintenance and repairs required as the result of unauthorized movement, alteration, damage, or destruction will not be assumed by ATF. At all times, the NIBIN Partner agrees not to make or cause to be made any repairs, alterations, movements, additions, improvements, or replacements to the NIBIN systems not expressly authorized in writing by ATF in advance, and further agrees to exercise due care in every respect to prevent system movement, damage, destruction, or misuse.

### **ATF-DEPLOYED SYSTEM USAGE**

Because the NIBIN Program focuses on the reduction of firearms-related violent crimes, the NIBIN Partner shall enter all eligible ballistic evidence recovered from crime scenes as soon as possible. In addition, the NIBIN Partner shall enter into NIBIN test-fire cartridge cases from eligible firearms taken into law enforcement custody in a timely manner. All NIBIN Partner-owned NIBIN equipment will be held to same standards as ATF-deployed systems. NIBIN Partners may not charge other law enforcement agencies for the entry of evidence into ATF-owned or ATF-maintained automated ballistics technology used in the NIBIN Program.

### **ATF-DEPLOYED SYSTEM REMOVAL**

ATF retains the right to remove a NIBIN system upon: (1) a determination that the equipment is neglected or misused; (2) a determination that the equipment is not used effectively to combat violent crime; (3) failure to comply with any obligations or requirements set forth in this MOU; (4) receipt of written notification of the termination of the participation of the NIBIN Partner in the NIBIN Program; (5) the cancellation of this MOU by ATF; or (6) termination of the NIBIN Program by ATF.

If ATF intends to remove a NIBIN system from the NIBIN Partner, ATF will provide written notice.

## **SELF-PURCHASED SYSTEMS**

All clauses that reference ATF-Deployed Systems are not applicable to agencies that self-purchase equipment. However, all other requirements involving network requirements, usage, Minimum Required Operating Standards (MROS), movement of equipment, network requirements and security requirements do apply to all agencies on the NIBIN network. These requirements ensure the integrity of the database and the network security.

## **SYSTEM MOVEMENT**

If the NIBIN Partner seeks to move its NIBIN system, it must submit a written request to ATF. ATF's decision regarding the proposed move will be provided to the NIBIN Partner in writing. Any movement of the NIBIN system after the initial installation will occur at the expense of the NIBIN Partner and only after receipt of authorization by, and coordination with, FTI. In order to realize maximum use of the equipment, it should be placed where trained personnel can expeditiously enter evidence. ATF will work with each partner to realize optimal placement of equipment to obtain actionable investigative leads.

In the event of a natural disaster, ATF will work with the NIBIN Partner to safeguard the NIBIN equipment.

Due to communication line installation/move requirements, NIBIN Partners must provide a minimum of 120 calendar days' advance notice to ATF and the NIBIN system manufacturer before the intended move of a NIBIN system.

In the event of unauthorized movement, alteration, damage, or destruction of any NIBIN system caused by its employees, contractors, or any other person under its control, the NIBIN Partner agrees to assume the cost of replacement or repairs of the equipment.

The NIBIN Partner agrees to report to ATF, within 5 calendar days, any incident involving the following: an unauthorized movement, alteration, damage, or destruction of ATF-deployed NIBIN systems, any unauthorized use of NIBIN systems or the unauthorized release of data related to the NIBIN Program.

## **COMMUNICATION LINES**

ATF will provide and support primary communication lines necessary for connecting NIBIN systems to the NIBIN network.

## **SECURITY**

The NIBIN Partner will comply with all ATF, DOJ and/or other Federal security requirements related to the NIBIN program, network, and systems to ensure the integrity of the program. These requirements are set forth under NIBIN security policies. ATF

will promptly notify the NIBIN Partner should these requirements change. All NIBIN sites will not knowingly allow a person to access the NIBIN network using another person's user ID and password.

The NIBIN Partner agrees to conduct criminal background checks, including fingerprint checks, of all NIBIN users. Upon successful completion of these background checks, the NIBIN Partner will notify ATF's NIBIN Branch in writing.

### **SYSTEM USAGE AND MINIMUM REQUIRED OPERATING STANDARDS**

To ensure the consistency, integrity, and success of NIBIN, ATF has enacted Minimum Required Operating Standards (MROS). The MROS, listed below, are rooted in ATF's "Four Critical Steps for a Successful NIBIN Program" – comprehensive collection, timeliness, investigative follow-up, and feedback. They identify the practices that best allow NIBIN to provide comprehensive and timely crime gun intelligence.

1. Enter all fired or test fired cartridge cases from serviced law enforcement agencies and/or departments through a NIBIN acquisition machine within 2 business days of receipt.
2. Enter accurately all required information during the acquisition process on the NIBIN acquisition machine.
3. Correlate and conduct a secondary review of any potential NIBIN leads through an approved NIBIN correlation machine within 2 business days.
4. Disseminate NIBIN leads within 24 hours.
5. Designate and maintain a NIBIN program administrator.
6. No policy shall inhibit or restrict NIBIN submissions by serviced law enforcement agencies and/or departments.
7. Operate with only qualified NIBIN users.

Please note that Standards 3 and 4 are not applicable to NIBIN sites using the NIBIN National Correlation and Training Center for correlation reviews of ballistic images.

As a NIBIN partner, the AURORA POLICE DEPARTMENT is striving to meet the MROS by developing and implementing changes in their operations and working toward compliance. Each NIBIN site must be in compliance with MROS or working towards compliance to the satisfaction of the Crime Gun Intelligence Governing Board.

### **AUDITS**

ATF and the NIBIN Partner acknowledge their understanding that the operations described in this MOU are subject to audit by ATF, DOJ, the DOJ Office of the Inspector



General, the General Accountability Office, and other auditors designated by the U.S. Government regardless of the funding source for the system (NIBIN Partner or ATF). Such audits may include reviews of all records, performance measurements, documents, reports, accounts, invoices, receipts, or other evidence of expenditures related to this MOU and the NIBIN Program.

Notwithstanding, ATF will conduct audits of all NIBIN Partners and their sites once every two years for the remainder of the MOU. The purpose of the audits is to review and verify compliance with the required MROS. Each site must be in full compliance with the MROS in order to maintain access to NIBIN.

Further, the NIBIN Partner agrees to allow auditors to conduct one or more in-person interview(s) of any and all personnel the auditors determine may have knowledge relevant to transactions performed or other matters involving this MOU and the NIBIN Program.

The NIBIN Partner hereby acknowledges its understanding that, for accounting purposes, that the principles and standards for determining costs shall be governed by the policies set forth in the Office of Management and Budget Circular A-87, revised (available via the OMB, the Superintendent of Documents at the U.S. Government Printing Office, or via the Internet at <http://www.whitehouse.gov/omb/circulars/a087/a087-all.html>.)

## **PERSONNEL AND TRAINING**

Prior to the execution of this MOU and a NIBIN system installation, the NIBIN Partner must employ, or have access to, a technical person capable of performing forensic microscopic comparison of bullet and cartridge evidence.

The NIBIN Partner agrees to provide and maintain sufficient personnel to operate the NIBIN system and agrees to allow use of the equipment by ATF personnel or our representatives to support the program at the host location. All personnel accessing NIBIN must be a Qualified NIBIN User as required by the MROS. This MOU should not be construed to require the hiring of any new personnel, except at the discretion of the NIBIN Partner. If the NIBIN Partner determines that additional personnel resources are required, all costs associated with this hiring will be borne by the NIBIN Partner. All users of the equipment must satisfy the same requirements as other NIBIN users and be properly trained, qualified and approved in advance by ATF.

Following basic entry training, ATF will verify trainee competency before authorizing network access. Individuals trained internally by a NIBIN Partner will not be certified as appropriately trained until they successfully pass a competency test administered by ATF.

The NIBIN Partner may provide access to the NIBIN system under its operational control to another law enforcement agency. Any such other law enforcement agency agrees to the same restrictions placed upon the NIBIN Partner by this MOU. However, the NIBIN Partner agrees to assume full liability and responsibility for the administration of such access.

Access to the NIBIN system will be under the management and control of the NIBIN Partner. The NIBIN Partner will ensure that only trained, cleared and qualified personnel have access to the NIBIN system.

Participating agencies will develop the appropriate standard operating procedures to ensure all eligible ballistic evidence will be submitted for NIBIN.

## **COORDINATION**

ATF and the NIBIN Partner agree to adhere to standardized procedures and policies for collecting, handling, documenting, transporting and preserving firearms, bullets, casings and any similar evidence submitted for analysis and input into NIBIN.

ATF and the NIBIN Partner similarly agree to adhere to standardized procedures and policies for the source data collection, input, exchange and protection of information, to include information as to the location where ballistic evidence was collected, the circumstances under which it was collected and all crimes to which the firearm(s) or other ballistic evidence is linked.

ATF and the NIBIN Partner agree to cooperate in the development and implementation of data entry protocols and quality assurance procedures for the NIBIN Program. ATF further agrees to cooperate with all participants in the NIBIN Program to establish model standards, protocols, and procedures for the users of the network. Such protocols will be applicable as they are implemented.

The NIBIN Partner will require all participating law enforcement agencies to adhere to the protocols, procedures, policies and quality assurance standards as established above.

Except as expressly prohibited by law, the NIBIN Partner agrees to provide ATF with access to all information, reports and any other relevant information regarding crimes related to evidence entered into the system as well as monthly reports outlining historical, statistical and case adjudication information on the use and results of the use of the NIBIN Program and/or system and the related services provided by ATF and the system manufacturer in order to ensure the capturing of required performance management information. Such information will be gathered for the purpose of informing the law enforcement community, other Government agencies, Congress and the public on NIBIN results. Additionally, ATF will collect information for results-oriented performance measures.

## **PUBLICITY**

Any NIBIN Partner who becomes aware of, or participates in, publicity related to the NIBIN system and investigations within their jurisdiction should advise ATF of same within 48 hours.

**DISCLOSURE OF INFORMATION RELATED TO NIBIN**

NIBIN system information may be shared with other law enforcement and prosecutors' offices in furtherance of criminal investigations and prosecutions. The NIBIN Partner shall not share any NIBIN system information for other purposes, including requests under the Freedom of Information Act, without express, written authorization from ATF.

**INCORPORATION OF APPENDIX**

The Appendix to this MOU includes definitions of terms used and is fully incorporated herein. Because requirements may change over time, due to technological advances, security enhancements, or budgetary matters, the Appendix may be updated.

**AGREEMENT**

ATF and the NIBIN Partner hereby agree to abide by the terms and conditions of this MOU, including any appendices, and all policies of the NIBIN Program. The terms and conditions of this MOU will be considered accepted in their entirety upon the signature by the ATF Special Agent in Charge and the NIBIN Partner signature.

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Name of Chief Law Enforcement/Public Safety Official	Date
Aurora Police Department	
Street address	
City, State, Zip Code	

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Brent Beavers	Date
Special Agent in Charge, Denver Field Division	
Bureau of Alcohol, Tobacco, Firearms and Explosives	

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Katherine Eberhardt	Date
Chief, Firearms Operations Division	
Bureau of Alcohol, Tobacco, Firearms and Explosives	

## APPENDIX

### TERMS

**Acquisition** - An entry of a ballistic image.

**ATF** – Bureau of Alcohol, Tobacco, Firearms and Explosives, a principal law enforcement agency within the U.S. Department of Justice.

**Bullets** – Designated calibers of projectiles fired from rifles, revolvers, and pistols.

**Cartridge cases** – Designated metal casings from cartridges fired from rifles, shotguns, revolvers, and ejected from pistols.

**Correlation** – Automated data comparison of signature images to a database.

**Crime Gun** – Any firearm that is illegally possessed, used in a crime, or suspected by law enforcement officials of having been used in a crime or act of terrorism.

**Found or Abandoned Firearms** – Firearms that come into the custody of law enforcement outside of investigative or judicial process. A found firearm is located by law enforcement or a non-owner and the owner-possessor is not readily identifiable (e.g., a firearm found in an open field). An abandoned firearm may be a found firearm or a firearm where the possessor chooses to permanently relinquish control of the firearm and abandon any rights of ownership. ATF suggests that NIBIN Partners provide written notice to those persons permanently abandoning or temporarily relinquishing custody of a firearm that the firearm will be test fired and the results entered into the NIBIN System.

**NIBIN Network** – An ATF-designed and maintained system of interconnected computer systems and terminals used in support of the NIBIN Program.

**NIBIN Program** – The integration of aggressive targeting, investigation, and prosecution of shooters and their sources of crime guns using automated ballistics technology.

**NIBIN Program Administrator** – An individual the NIBIN site has designated to communicate with all parties (e.g., submitting law enforcement agencies, ATF Crime Gun Intelligence Centers) involved in the NIBIN process. The NIBIN Program Administrator must be a qualified NIBIN user and full-time employee of the NIBIN site. The NIBIN Program Administrator should be responsible for implementing and directing policies and procedures of the NIBIN site.

**NIBIN System** – Refers to the integrated ballistic imaging, analysis, and information processing system for use with automated ballistics technology.

**Performance Measurements** – Various management instruments used to evaluate program effectiveness in successfully removing shooters and their crime gun sources. Performance measurements also include the NIBIN Minimum Required Operating Standards and related audits.

**Potential Candidate for Confirmation** – Two bullets or cartridges cases displaying sufficient similarity during a correlation review such that the items should be compared using traditional comparative microscopy by a trained firearm examiner to determine if they can be associated to the same firearm.

**Qualified NIBIN User** – technician and/or firearms examiner trained by ATF, Forensic Technology, and/or a NIBIN Authorized Trainer program to perform acquisition and/or correlation reviews of ballistic images on the NIBIN network.

**Security Requirements** – Types and levels of physical and cyber protection necessary for equipment, data, information, applications, and facilities to meet security policies and standards.

**Security Policies** – The set of laws, rules, directives, and practices that regulate how an organization manages, protects and distributes controlled information.

**Timely** – Occurring at a suitable time and without unnecessary delay. Some NIBIN submissions require a response within 48 hours to be considered timely.

**Volunteer** – An individual who has chosen to perform services without charge or payment and has entered into a written agreement with a NIBIN Partner addressing issues of confidentiality, costs, and waiver of all claims against the Federal government.

Memorandum of Understanding (MOU)  
Between

The  
Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

And

The  
AURORA POLICE DEPARTMENT  
Hereinafter referred to as NIBIN Partner Site (NPS)

I. PURPOSE

This serves as an agreement between ATF and NPS: AURORA POLICE DEPARTMENT

This agreement allows for ATF to perform correlation review(s) for the NPS ballistic evidence which is entered into the NIBIN database. These correlation reviews will be conducted by ATF through the NIBIN National Correlation and Training Center (NNCTC) and will be disseminated back to the affected parties as documented in this MOU.

II. ROLES AND RESPONSIBILITIES OF ATF

The NNCTC, on the basis of a request for assistance by the appropriate ATF Field Division Special Agent in Charge (or their Designee), will perform correlation reviews on all ballistic evidence entered into NIBIN by the NPS and issue documentation of the NIBIN Leads or Negative results to all affected parties within 24-48 hours. The NNCTC will not perform correlation reviews on evidence entered or received by the NPS prior to the NNCTC start date that is scheduled at the time of onboarding.

The ATF Special Agent in Charge initiating the request will assign a field division liaison to act as an intermediary between the NNCTC and the NPS and ensure that the protocols established by this MOU as well as MROS are followed in order to establish effective processes for the utilization of NIBIN in the field.

The services of the NNCTC will be handled by highly trained IBIS technicians. In addition, all of the technician's work will be peer reviewed and finally reviewed by a senior firearms and tool mark examiner assigned to the NNCTC prior to dissemination to the field.

The NNCTC will review any results with a Unified Score over 1.2 for every case. This standard was established based upon research and discussion within the NIBIN community as well as published articles on the subject. If necessary and justified by the circumstances of a particular investigation, the NNCTC will increase this threshold as warranted. A site may request a more

exhaustive search of the database or an expedited correlation review/response (under 24 hours) when the NPS deem it absolutely necessary and mission critical; however, appropriate justifications for such service will be required along with follow up written documentation to the NNCTC. These types of requests should be rare based upon the success we achieve with correlations results from the Unified Scoring System over 1.2 and the standard 24-48 hours turnaround; therefore, the procedure for the NPS to request a more exhaustive search will be handled via telephonic communication with the NNCTC Firearms and Tool mark Examiner supervisor and followed up by an email documenting the justification for such request(s).

The NNCTC is authorized to provide accurate and timely documentation of the correlation reviews and negative results to the parties through a distribution list provided by the sponsoring ATF Field Division.

### III. ROLES AND RESPONSIBILITIES OF THE NPS

The true performance metric of NIBIN is the successful prosecution of shooters. In order to best utilize the services of the NNCTC, the NPS agrees to establish policies and procedures that adhere to the four critical steps of an effective and sustainable NIBIN program:

**Comprehensive Collection:** NPS must establish internal policies for the collection and submission of all evidence suitable for entry into NIBIN regardless of crime. Evidence includes cartridge cases recovered from crime scenes and test fires from seized or recovered crime guns.

**Timely Turnaround:** Since violent crime investigations can go “cold” very quickly the goal is to get the evidence into NIBIN as soon as possible after collection, then to provide any and all relevant NIBIN intelligence (NIBIN Leads/Negatives) back to the investigator within 24-48 hours.

**Follow-Up:** Investigators, intelligence personnel and prosecutors should pursue NIBIN Leads as appropriate. Follow-up contains three distinct but overlapping components: comprehensive crime gun intelligence, effective and thorough criminal investigation, and consistent prosecution.

**Feedback:** Feedback is necessary for the sustained success of a NIBIN program and allows all involved to benefit from the process through ongoing evaluation and innovation. Feedback should be provided to all parties involved including patrol, investigative, lab, and intelligence personnel.

1. The NPS will enter the applicable investigator(s) contact information into the case comments section when entering evidence into IBIS. The contact information for said investigator should contain at a minimum: Name, Title, Telephone number and Email address in the format provided below. This will allow for the establishment of clear lines of communication between the NNCTC and the field investigators in order to best utilize the NIBIN Lead during the course of criminal investigations.

**Add Case**

Case Number \*  
 Occurrence Date \*  
 Select a date

Event Type \*  
 Case Supervisor

Originating Agency \*  
 Originating Agency Reference

High Profile

Restricted Status  
 Default

\*Mandatory

Comments  
 John A. Smith  
 Detective  
 212-555-1234  
 john.a.smith@agency.gov

OK  
 Cancel  
 Help

2. If the NPS conducts occasional or mission specific correlations reviews in lieu of utilizing the services of the NNCTC, the NPS will indicate this fact by changing the status of the corresponding IBIS correlation requests to "**Previously Viewed**" in order to prevent redundancy.
3. For every test fired cartridge case acquired into IBIS, the NPS will provide all applicable make; model; caliber; and serial number, by associating an IBIS firearm exhibit to the test fired cartridge case or bullet exhibit. The serial number should be documented exactly as it is inscribed on the firearm, NO special characters or titles (i.e. do not input "serial # 123AEG instead input 123AEG"). This will facilitate accurate and timely crime gun intelligence. Also, an effort should be made to enter any other available firearm information in the Firearm Exhibit Details section, such as recovery information and/or possessor.

**Add Firearm Exhibit**

Exhibit Number \*

Caliber \*  
 Model

Make \*  
 Type \*

Serial Number

Comments

\*Mandatory

Details...

OK  
 Cancel  
 Help



#### IV. REPORTING REQUIREMENTS

On a quarterly basis the NPS will provide a report to the ATF Field Division liaison detailing whether or not any ATF issued NIBIN Lead(s) were later confirmed by a Firearm and Tool mark Examiner.

It is strongly recommended that the NPS forward any relevant NIBIN success stories to ATF. Doing so reaffirms the importance of NIBIN and assists with the advancement of the local and national NIBIN program(s). These success stories can be provided to the ATF Field Division Liaison or emailed directly to <mailto:NNCTC-FOD@atf.gov>

#### V. FUNDING AND ADMINISTRATIVE MATTERS

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. This MOU is a basic statement of the understanding between parties of the matter described herein. Expenditures by each party will be subject to its budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the language in this MOU in no way implies that funds will be made available for such expenditures.

#### VI. INFORMATION SHARING CONDITIONS

Both ATF and the NPS acknowledge their understanding that work performed under this MOU by the NNCTC is “LAW ENFORCEMENT SENSITIVE” and intended “FOR OFFICIAL LAW ENFORCEMENT USE ONLY.” Failure to protect and safeguard such data from loss, misuse, or unauthorized access could adversely affect law enforcement operations, including those areas related to officer safety, as well as, the fair and equitable administration of justice, and the privacy of individuals. Information provided by the NCNTC shall be used for investigative purposes only.

No information produced pursuant to this MOU may be duplicated, reproduced, or disseminated without the express authorization of ATF and/or the NPS, except as may be required by State or Federal law or court of competent jurisdiction. The Parties agree that premature disclosure of NNCTC data can reasonably be expected to interfere with pending or prospective law enforcement proceedings. It is agreed that the law enforcement sensitive firearms information generated pursuant to this MOU shall not be disclosed to a third party without the consent of both Parties of this MOU, subject to Federal and any applicable non-conflicting State law. The Parties agree to notify all other Parties to the MOU prior to the release of any sensitive firearms information to a third party under State or Federal law.

Releases to the media or third parties, judicial demands, public announcements, Freedom of Information Act/Privacy Act/Open Records requests, and communications with Congress concerning information generated and retrieved pursuant to this MOU shall be addressed by the Parties following coordination by authorized representatives of each Party.

Over the course of the agreement, both parties may come across information that may identify U.S. persons whose information is protected by the Privacy Act of 1974 and/or Executive Order 12333 (or any successor executive order). All such information will be handled lawfully

pursuant to the provisions thereof.

VII. COMMENCEMENT OR EFFECTIVE DATE DETERMINATION

The terms of this MOU will become effective on the date on which it is signed by all parties. This MOU will remain valid until modified or rescinded by written mutual consent or terminated unilaterally after 30 days advanced written notice by any party via certified mail. Notice shall be made to the Chief, Firearms Operations Division of ATF, 99 New York Ave NE Room 6N. 555 Washington DC 20226. This fully executed MOU is entered into by ATF and the NPS prior to the commencement of service by the NNCTC to facilitate a logical transition of correlation services from the NPS to the NNCTC. The onboarding date, determined by both the NNCTC and NPS, will be the date used by the NPS for acceptable entry and receiving dates of submissions to the NNCTC as indicated in Section II, Paragraph 1 of the MOU.

_____ Signature (Chief Law Enforcement or Public Safety Official)	_____ Date	_____ Signature (ATF - Special Agent in Charge)	_____ Date
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_____ Name	_____ Name
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_____ Title	<u>Special Agent in Charge</u> _____ Title
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<b>AURORA POLICE DEPARTMENT</b> _____ NESS Partner Site	_____ ATF Field Division
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_____ Signature	_____ Date
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\_\_\_\_\_  
Name

Chief, Firearms Operations Division  
\_\_\_\_\_  
Title

RESOLUTION NO. R2023 – \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,  
APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE AURORA  
POLICE DEPARTMENT AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS,  
AND EXPLOSIVES REGARDING THE NATIONAL INTEGRATED BALLISTIC  
INFORMATION NETWORK

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

WHEREAS, Section 10-12 of the City Charter authorizes the City Council, by resolution, to enter into contracts or agreements with other governmental units or special districts for the joint use of buildings, equipment, or facilities, and for the furnishing or receiving of services; and

WHEREAS, This MOU establishes and defines a partnership between the parties that will result in an ATF National Integrated Ballistic Information Network (NIBIN) system installation, operation, and administration for the collection, timely analysis, and dissemination of crime gun data to enhance the efforts of law enforcement to integrate resources to reduce firearms violence, identify shooters, and refer them for prosecution.

WHEREAS, The ATF NIBIN Program uses sophisticated technology to compare images of ballistic evidence. It is part of an integrated investigative approach to reduce firearms violence and improve crime gun intelligence. Through aggressive targeting, investigation, and prosecution of shooters and their sources of crime guns, Federal, State, tribal, and local law enforcement agencies work in concert to combat firearms-related violence; and

WHEREAS, Participation in this program is expressly restricted to the sharing of ballistic imaging of firearms data associated with crimes recovered by any law enforcement agency in the United States and international law enforcement partners who have entered into agreements with ATF to share ballistic data. ATF may work with our international law enforcement partners to search their networks in an effort to identify a crime gun in their database against a crime gun in ATF's NIBIN network; and

WHEREAS, in order to facilitate these objectives, each Party agrees to fulfill the purposes of this Agreement to further local and federal law enforcement objectives in the best interests of citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Intergovernmental Agreement between the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Aurora Police Department regarding the National Integrated Ballistic Information Network is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the attached agreement in substantially the form presented at this meeting with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
MEGAN PLATT, Assistant City Attorney



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Residential Snow Plow Intergovernmental Agreement (IGA) with Blackstone Metropolitan District for Snow Removal and Plowing Operations on Local Streets
<b>Item Initiator:</b> Lynne Center, Deputy Director Public Works Operations
<b>Staff Source/Legal Source:</b> Lynne Center, Deputy Director Public Works Operations/Michelle Gardner, Sr. Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND BLACKSTONE METROPOLITAN DISTRICT FOR SNOW REMOVAL AND PLOWING OPERATIONS ON LOCAL STREETS  
 Lynne Center, Deputy Director of Operations, Public Works / Michelle Gardner, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

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**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval
- Forwarded Without Recommendation  Minutes Not Available
- Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

Following the "Bomb Cyclone" in March 2019, Staff explored options for plowing snow on residential streets. One option explored was allowing a metro district to plow snow on public residential streets within the district's boundaries. A pilot program was conducted from January 2020 through June 2022 with the High Plains Metro District serving the Blackstone neighborhood.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

Under the sponsorship of Councilmember Francoise Bergan, on September 25, 2023, Council approved Resolution R2023-106 setting the agreement form of the Intergovernmental Agreement (IGA) allowing interested special districts (Districts) and established homeowner's associations (HOAs) to provide snow removal for residential streets within the Districts/HOAs boundaries. Under this program the Districts/HOAs are required to prepare and submit a Snow and Ice Control Plan that includes an indication of the category storm at which they would begin plowing, a list of equipment that will be used, a list of material that may be used, and contact information for the Districts/HOAs and their plowing operator. The Districts/HOAs are also required to comply with City insurance requirements and submit regular snow event reports throughout the term of the agreement. IGAs can be executed for a period of one to five years. This program allows Districts/HOAs to plow residential City-owned streets within their boundaries, but it does not require them to do so. The IGAs can be terminated at any time by either party.

R2023-106 establishes the program and form of IGA for the program. It also modifies the normal approval process for such IGAs through Council and allows them to be brought immediately to a Regular Session of Council, bypassing the Policy Committee meeting and Study Session meeting. Further, it waives the period of reconsideration, but only if the approved IGA is used without significant changes.

The Blackstone Metropolitan District board has executed an IGA that substantially meets the form set in R2023-106 and has submitted a snow and ice control plan, as required. Blackstone has indicated they plan to begin operations for a Category III (6 inches or more) storm.

The term for this IGA is January 1, 2024 through June 30, 2028.

Staff recommends approval of the IGA within the Blackstone Metropolitan District by the resolution included.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact
- Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does City Council approve the resolution for the IGA with Blackstone Metropolitan District for snow removal and plowing operations on local streets?

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**LEGAL COMMENTS**

The Council shall have all legislative powers of the city and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter. (City Charter Section 3-9). Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)

**AGREEMENT BETWEEN  
THE CITY OF AURORA, COLORADO  
AND THE BLACKSTONE METROPOLITAN DISTRICT  
FOR SNOW REMOVAL AND PLOWING OPERATIONS ON LOCAL STREETS  
(BLACKSTONE)**

**THIS AGREEMENT FOR SNOW REMOVAL AND PLOWING OPERATIONS (“Agreement”)** is dated this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the City of Aurora, Colorado, a home rule municipal corporation (the “City”), and the Blackstone Metropolitan District, a quasi- corporation and political subdivision of the State of Colorado (the “District”), collectively referred to as the “Parties.”

**RECITALS**

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

**WHEREAS**, the City’s Public Works Department is authorized to promulgate rules and regulations for the public right-of-way within the jurisdiction of the City, over all City-owned public streets, roadway and way dedicated for the use of the public, and to provide snow plowing and removal operations thereto; and

**WHEREAS**, due to the necessity for the City to prioritize snow removal on City roads to best facilitate winter travel on all City roads, the City is generally unable to assign a high priority for snow removal on internal subdivision roads or other relatively lower use City roads, such as the roads described in this Agreement; and

**WHEREAS**, the District provides certain operations and maintenance services within the Blackstone subdivision and the roads identified in this Agreement are internal to said subdivision; and

**WHEREAS**, the District may desire to have snow removed or plowed from the City roads described in this Agreement on a more frequent basis than the City is able to provide, given the overall City road priority and demand for snow removal or plowing citywide; and

**WHEREAS**, the City is agreeable to authorizing the District to privately remove or plow snow or contract for the private removal or plowing of snow on the roads described herein, subject to the terms and conditions for such snow removal or plowing operations as are set forth in this Agreement; and

**WHEREAS**, the City is not relinquishing its authority to regulate streets and alleys, pursuant to Section 31-15-702, C.R.S., by agreeing to authorize the District to perform snow removal services or plow snow or contract for said services, for the identified roads or road segments in the attached Exhibit A; and

**WHEREAS**, the District Board met on **November 7, 2023** and is in support of this Agreement; and



**WHEREAS**, the City Council is authorized by City Charter 10-12 to enter into this type of agreement; and

**WHEREAS**, pursuant to City Charter 3-9, City Council shall have all legislative powers of the City and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter.

**NOW, THEREFORE**, in consideration of the mutual promises, authorizations, and conditions set forth in this Agreement, the Parties hereto agree to the following terms and conditions:

### **AGREEMENT**

The District is hereby authorized to remove or plow snow, or contract for said services, during the term of this Agreement from the City roads or road segments that are identified in Exhibit A, which is attached hereto and is incorporated into this Agreement by this reference, and from no other City roads.

1. The Term of this Agreement shall commence on the 20th day of December, 2023, and shall end on the 30<sup>th</sup> day of June, 2028, unless sooner terminated in accordance with the provisions of this Agreement.

2. Prior to commencing any snow removal or plowing operations under this Agreement, the District shall identify to the City for its approval any contractors and/or subcontractors (the "Operator") who will be performing the snow removal or plowing operations on behalf of the District. In the event that the District desires or needs to change or replace such Operator during the term of this Agreement, the District shall notify the City and shall not perform or authorize the performance of any further snow removal or plowing operations until the City approves the new or replaced Operator. The City may withhold approval of any proposed Operator for any reasonable and lawful cause.

3. In performing the snow removal or plowing operations authorized hereunder, the District and any Operator shall comply with the provisions of Exhibit B attached hereto and incorporated herein by this reference, and the District and any Operator shall exercise all reasonable and due care in the performance of the snow removal or plowing activities authorized under this Agreement and shall, jointly and severally, be responsible for any damages caused to persons or property, directly or indirectly, in the performance of the snow removal or plowing activities.

4. Insurance: The District and its Operator shall provide insurance as set forth in the attached Exhibit C. All equipment used in the performance of the snow removal or plowing activities authorized under this Agreement and the performance of such snow removal or plowing activities shall comply with all applicable federal, state, and local laws, ordinances, and rules and regulations.

5. This Agreement, and any issues involving this Agreement, are subject to and shall be interpreted under the law of the State of Colorado and the rules and regulations of the City. Court venue and jurisdiction shall be in the Colorado District Court for Arapahoe County. The

Parties agree that this Agreement shall be deemed to have been made in, and the place of performance is deemed to be in, Arapahoe County, State of Colorado.

6. Any dispute as to the interpretation of this Agreement or the requirements stated in Exhibit B shall be submitted to the City's Director of Public Works or his/her designee. The Director or his/her designee shall review and make a written decision on the dispute within ten (10) City business days of receiving the dispute. The Director's decision shall be final and binding on the Parties.

7. The performance of any City and District obligations under or related to this Agreement, if any, is expressly subject to the appropriation of funds by the Aurora City Council or the District Board, respectively. Nevertheless, it is expressly understood and agreed that this Agreement and the snow removal or plowing activities authorized thereunder are for the benefit of the District and shall be at the sole expense of the District. The City has no obligation to pay for any of or any portion of the snow removal or plowing activities authorized hereunder and the District is entitled to no compensation from the City for its performance of same.

8. This Agreement may be amended only in writing by the duly authorized governmental bodies of the Parties and in the same form as this Agreement.

9. Notices. All notices shall be sent to the following addresses:

For the District: Blackstone Metropolitan District  
c/o Westwind Management Group, LLC  
27 Inverness Drive East  
Englewood , CO 80112

For the City: Public Works Department  
Attn: Deputy Director of Public Works - Operations  
15151 E. Alameda Pkwy, Ste. 3300  
Aurora, CO 80112

10. THIS AGREEMENT IS MADE AT THE REQUEST OF THE DISTRICT FOR THE DISTRICT'S BENEFIT. THE DISTRICT DOES HEREBY WAIVE, REMISE, AND RELEASE ANY CLAIM, RIGHT, OR CAUSE OF ACTION THE DISTRICT MAY HAVE OR WHICH MAY ACCRUE IN THE FUTURE, WHETHER UNDER THEORIES OF CONTRACT OR ANY OTHER CAUSE OF ACTION WHATSOEVER, AGAINST THE CITY ARISING IN WHOLE OR IN PART FROM THIS AGREEMENT.

11. By entering into this Agreement, the Parties do not waive any governmental immunity available to them or their elected officials, employees or agents under CRS 24-10-101, *et seq.*, or any other federal or state law or the common law, and nothing in this Agreement shall be interpreted to effect a waiver of any such governmental immunity available to the Parties, their elected officials, employees or agents.

12. Either party may terminate this Agreement for convenience upon thirty (30) calendar day's prior written notice to the other party. Any notice of termination shall state the actual effective date of termination. Upon termination of this Agreement, all rights and obligations thereunder shall terminate, except that the District shall remain responsible and liable for any damages caused, directly or indirectly, by its performance under this Agreement.

13. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or individual homeowner or other person or entity whatsoever on or under this Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

14. This Agreement constitutes the entire Agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein.

15. The District shall not assign or otherwise transfer this Agreement or any right or obligation hereunder without the prior lawful approval of the authorized governmental bodies of the Parties and in the same form as this Agreement.

16. This Agreement authorizes the District to conduct snow removal operations on the identified City roads, but the District shall have the right to determine, in its sole and absolute discretion, the frequency of such snow removal operations, if at all. Nothing in the Agreement shall be construed or interpreted to require the District to conduct any snow removal operations on City-owned roads.

17. To the fullest extent permissible under the law of the State of Colorado, the District agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the District's obligations or actions or inactions, and the Operator's obligations or actions or inactions, under this Agreement. The District shall promptly repair to the City's standards and satisfaction, or pay to the City the costs of repairing, any damage to City roads, curbs, gutters, sidewalks, signage, or any other City property resulting from operations or activities under this Agreement. The District's indemnity obligation under this Paragraph shall be for the full amount of any such loss, damages, injuries, claims, cause or causes of action or any liability whatsoever, including attorneys' fees, and court costs, and shall not in any way be capped or limited by the insurance provisions of this Agreement.

18. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings. The Parties hereto agree that this Agreement and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such

original documents for all purposes. Any electronic signature so affixed to this Agreement or any supplement or consent relating thereto shall carry the full legal force and effect of any original, handwritten signature

IN WITNESS WHEREOF, the Parties hereto set their hands in agreement as of the date first written above.

For: **CITY OF AURORA**

By \_\_\_\_\_  
MIKE COFFMAN, MAYOR


Attested to:

\_\_\_\_\_  
KADEE RODRIGUEZ, CITY CLERK

Approved as to Form:

\_\_\_\_\_  
MICHELLE GARDNER, SR. ASST. CITY ATTORNEY

For: **Blackstone Metropolitan District**

By  Shawn P. McGoff  
Shawn P. McGoff (Nov 27, 2023 19:46 MST)  
\_\_\_\_\_  
PRESIDENT

Attested to:

Lisa Monahan  
Lisa Monahan (Nov 27, 2023 14:47 PST)  
\_\_\_\_\_  
OFFICER OF THE DISTRICT

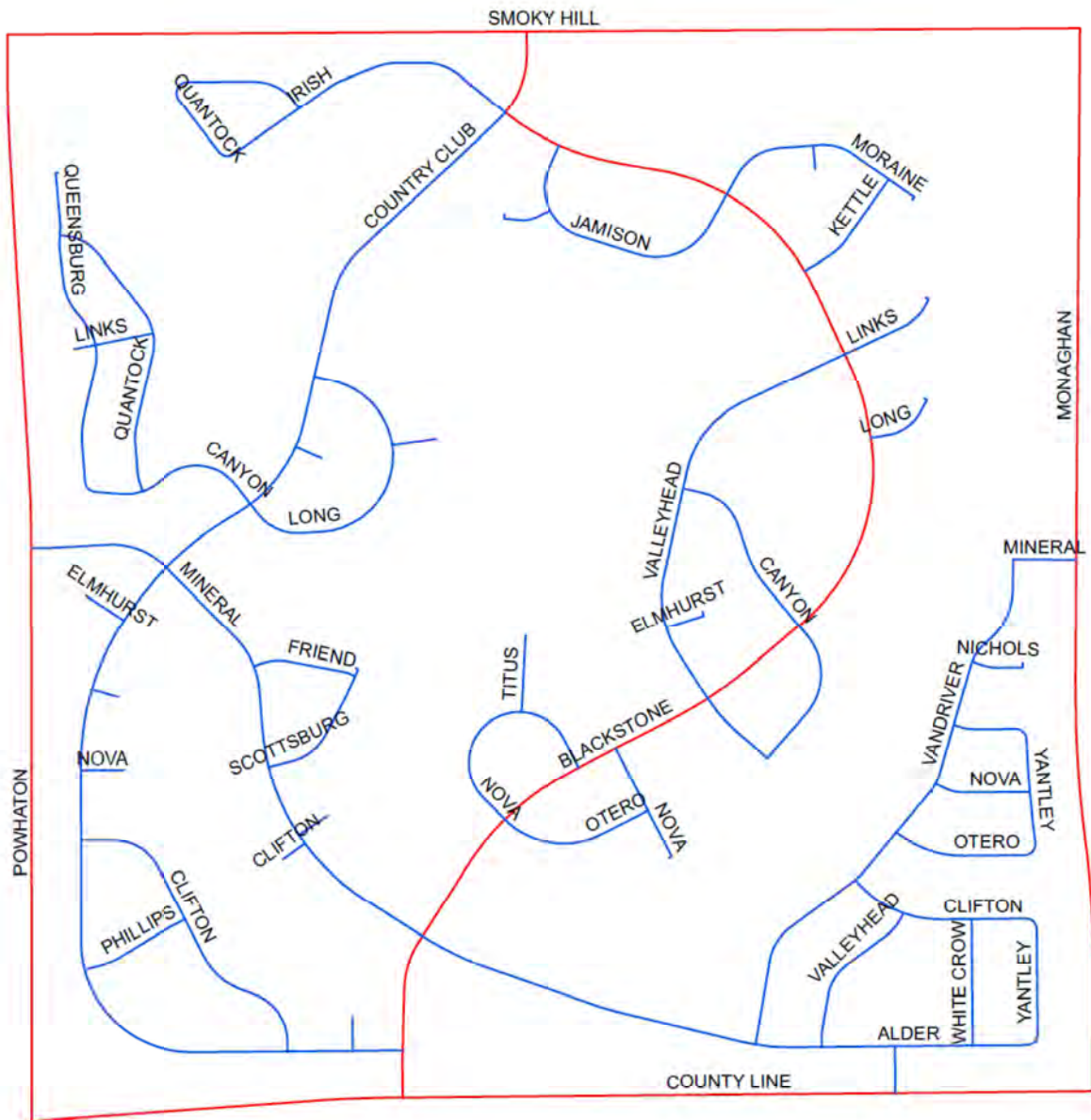
## **EXHIBIT A**

Snow removal or plowing operations authorized under this Agreement are permitted on the following City Roads:

All City Roads within the Blackstone Metropolitan District, as generally depicted within the red border as shown on the attached map.

[See attached map.]

# Blackstone Snow Removal Map



## EXHIBIT B

### General Considerations

- All snow removal or plowing services to be provided shall be performed and completed in a similar manner as performed by the City upon other public roads, exercising all reasonable and due care, and in good and workman like manner.
- The Operator is to report directly to the District Manager for the District.

### Prior to Winter Operations

The Operator shall be responsible for obtaining any other City licenses and permits to operate within the public right-of-way that may be required under the City Code.

The District shall file a snow and ice control plan with the City of Aurora no later than October 1<sup>st</sup> of any year covered by this agreement. The plan shall follow a city provided template and include the following information:

- A. District contact. This person shall be available to respond to city staff during every snow event.
- B. Operator contact. This person shall be the on-site operations supervisor during snow events and will be available to respond to city Staff during every snow event.
- C. List of Equipment - The District in collaboration with the Operator must submit and update as necessary, a complete list of equipment planned for winter operations. The list shall include the following information:
  - Types & makes of vehicles including trucks, loaders and graders,
  - Types & makes of plow,
  - Types of blades (carbide /regular steel) must be equipped with a flexible edge,
  - Models of spreaders (sand and sand/salt mixtures not allowed) ,
  - Types & models of material distribution control units,
  - Types & models of pre-wetting systems; (is this allowed?)
  - Types & models of liquid pre-treatment systems, if applicable.
- D. List of materials to be used during operations. The District will be responsible for any damage caused, or mitigation required, due to their use of these materials. Note, materials used must be approved by the City of Aurora and sand or sand/salt mixtures will not be allowed. This list shall include:
  - Commercial or common name of material,
  - Primary use of the material,
  - Primary distribution method including which equipment is used from the equipment list,
  - Material supplier(s),
  - Material Safety Data Sheets (MSDS) for all materials.
- E. Category of storm (as classified by City of Aurora Snow and Ice Control Plan) for which operations will occur.



- F. Frequency and duration of snow operations during a snow event.
- G. Locations for snow storage. HOA/SD is responsible for locating locations for snow storage and obtaining permission to utilize said locations as well as any erosion control measures required. Locations cannot include public rights of way or city-owned property without prior written permission.

#### During Winter Operations

Event Logs - If deployed during a snow event, the Operator shall complete a a daily event log using a city provided template. For events of a 24-hour or less duration, the daily event log can serve as the summary log. For events greater than 24-hours in duration, the District shall submit a summary log for the event to the City's Public Works Department within 5 working days of the end of the snow event.

Monthly Report - On a monthly basis, or when requested by the City, the District shall submit a year-to-date summary of deployments grouped by snow event to the City's Public Works Department. This report is required even if the Operator did not deploy. The final monthly report for any season shall be submitted prior to June 1<sup>st</sup> of any year covered by this contract.

## EXHIBIT C

### INSURANCE REQUIREMENTS

**Insurance and Indemnities:** Prior to commencement of this Agreement, the District and its designated Operator, shall provide a certificate of insurance evidencing the following coverages:

- A. **Commercial General Liability Insurance.** During the term of this Agreement, the District and the Operator shall provide general liability coverage against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate.
- B. **Commercial Automobile Liability Insurance.** The District and Operator shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident.
- C. **Excess or Umbrella Liability.** The District and the Operator shall maintain an Excess or Umbrella Liability on an occurrence basis in excess of the underlying insurance described in (a), which has coverages as broad as the underlying policies, with a limit of Two Million Dollars (\$2,000,000).
- D. **Workers' Compensation or Employers' Liability Insurance.** The Operator shall provide proof of workers' compensation coverage with limits as required by the laws of the State of Colorado. Additionally, the Operator shall provide proof of Employers' Liability Insurance with limits as follows:
  - \$500,000 bodily injury each accident
  - \$500,000 bodily injury each disease
  - \$500,000 bodily injury disease aggregate.

The Operator will provide to the City a copy of the Operator's insurance which evidences insurance coverages and limits as indicated in this agreement.

- E. **City as Additional Insured.** All insurance policies required by this agreement, except workers' compensation, shall name the City, its officers, employees and agents as an additional insured by endorsement and said coverage shall contain a waiver of subrogation. The Operator shall provide a copy of an endorsement providing this coverage.
- F. **Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.
- G. **Certificates of Insurance.** Upon the execution of this Agreement, the District and the Operator shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. The District agrees that the required

coverages will not be reduced, canceled, non-renewed or materially changed without thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of District's or the Operator's coverage is renewed at any time prior to the expiration of this Agreement, the District and the Operator shall be responsible for obtaining updated insurance certificates from the respective insurance carriers and forwarding the replacement certificates to the City within ten (10) days of the expiration date of any previously delivered certificate.

With respect to the Operator, the minimum A.M. Best rating of each primary insurer shall be A-X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The District and the Operator shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City of Aurora in response to the particular circumstances giving rise to the Agreement. **The District's or the Operator's policy will be primary and non-contributory with respect to any and all self-insurance or insurance policies purchased by the City.**

RESOLUTION NO. R2023-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND BLACKSTONE METROPOLITAN DISTRICT FOR SNOW REMOVAL AND PLOWING OPERATIONS ON LOCAL STREETS

WHEREAS, the City of Aurora, Colorado (the “City”), and Blackstone Metropolitan District (the “District”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City’s Public Works Department is authorized to promulgate rules and regulations for the public right-of-way within the jurisdiction of the City, for all City-owned public streets, roadway and way dedicated for the use of the public, and to provide snow plowing and removal operations thereto; and

WHEREAS, due to the necessity of the City to prioritize snow removal on City roads to best facilitate winter travel on all City roads, the City is generally unable to assign a high priority for snow removal on internal subdivision roads or other relatively lower use City roads, such as the roads described in the Agreement Between the City of Aurora, Colorado and Blackstone Metropolitan District for Snow Removal and Plowing Operations (“Agreement”); and

WHEREAS, the District provides certain operations and maintenance services within the District area and the roads identified in the Agreement are internal to said subdivision; and

WHEREAS, the District may desire to have snow removed or plowed from the City roads described in the Agreement on a more frequent basis than the City is able to provide, given the overall City road priority and demand for snow removal or plowing citywide; and

WHEREAS, the City is agreeable to authorizing the District to privately remove or plow snow or contract for the private removal or plowing of snow on the roads described herein, subject to the terms and conditions for such snow removal or plowing operations as are set forth in the Agreement; and

WHEREAS, the District’s Board met on November 7, 2023 to request the Agreement and voted in support of the Agreement; and

WHEREAS, the City Council is authorized by City Charter 10-12 to enter into this type of agreement; and

WHEREAS, pursuant to City Charter 3-9 the City Council shall have all legislative powers of the City and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter; and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the execution of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Agreement between the City and Blackstone Metropolitan District for Snow Removal and Plowing Operations is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

RLA

Michelle Gardner  
MICHELLE GARDNER, Sr. Assistant City Attorney

RESOLUTION NO. R2023-106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,  
APPROVING THE FORM OF AGREEMENT BETWEEN THE CITY OF AURORA,  
COLORADO AND SPECIAL DISTRICT/HOA FOR SNOW REMOVAL AND PLOWING  
OPERATIONS ON LOCAL STREETS

WHEREAS, the City of Aurora, Colorado (the “City”), and Title 32 special districts (“Districts”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City of Aurora, Colorado (the “City”), and homeowner associations (“HOAs”), collectively “the Parties”, as government agencies, are authorized to contract with one another to provide any function, service or coordination lawfully authorized to each; and

WHEREAS, the City’s Public Works Department is authorized to promulgate rules and regulations for the public right-of-way within the jurisdiction of the City, for all City-owned public streets, roadway and way dedicated for the use of the public, and to provide snow plowing and removal operations thereto; and

WHEREAS, due to the necessity of the City to prioritize snow removal on City roads to best facilitate winter travel on all City roads, the City is generally unable to assign a high priority for snow removal on internal subdivision roads or other relatively lower use City roads; and

WHEREAS, Districts and HOAs provide certain operations and maintenance services within their areas and roads that are internal and local to their subdivisions; and

WHEREAS, Districts and HOAs in Aurora may desire to have snow removed or plowed from City roads described on a more frequent basis than the City is able to provide, given the overall City road priority and demand for snow removal or plowing citywide; and

WHEREAS, the City is agreeable to authorizing Districts and HOAs to privately remove or plow snow or contract for the private removal or plowing of snow on the roads described herein, subject to the terms and conditions for such snow removal or plowing operations as are set forth in the attached Form of Agreement between the City of Aurora and Special Districts/HOAs for Snow Removal and Plowing Operations on Local Streets (“Agreement”); and

WHEREAS, the Districts and HOAs would need to meet certain criteria, included in the attached Agreement, in order to be authorized to perform such snow removal and plowing operations on local streets; and

WHEREAS, the City Council is authorized by City Charter 10-12 to approve this Agreement template; and

WHEREAS, pursuant to City Charter 3-9 the City Council shall have all legislative powers of the City and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter; and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the Form of Agreement between the City and Special Districts/HOAs for Snow Removal and Plowing Operations on Local Streets.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Form of Agreement between the City and Special Districts/HOAs for Snow Removal and Plowing Operations on Local Streets is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.


Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

Section 4. This resolution shall take effect immediately without reconsideration.

RESOLVED AND PASSED this 25th day of September, 2023.

  
MIKE COFFMAN, Mayor

ATTEST:

  
KADEE RODRIGUEZ, City Clerk Deputy  
Cecilia Zapata  
APPROVED AS TO FORM:



RLA

  
MICHELLE GARDNER, Sr. Assistant City Attorney

## MINUTES

### Regular Meeting of the Aurora City Council

Monday, September 25, 2023

1. **RECONVENE REGULAR MEETING OF SEPTEMBER 25, 2023, AND CALL TO ORDER**

Mayor Coffman reconvened the regular meeting of the City Council for September 25, 2023, at 6:30 p.m.

2. **ROLL CALL**– Kadee Rodriguez, City Clerk

COUNCIL MEMBERS PRESENT: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Marcano, Medina, Murillo, Sundberg, Zvonek

COUNCIL MEMBERS ABSENT: Angela Lawson

*Public call-in instructions were provided in both English and Spanish.*

3. **INVOCATION/MOMENT OF SILENCE**

Mayor Coffman led the prayer for the September 25<sup>th</sup> Council Meeting. He asked for a moment of silence to commemorate the two lives lost in a house fire the previous week, despite the brave efforts of Aurora Fire Rescue.

4. **PLEDGE OF ALLEGIANCE** (all standing)

5. **EXECUTIVE SESSION UPDATE**

Mayor Coffman provided an update on the Executive Session where they interviewed the interim city manager for the position of city manager.

Mayor Coffman read the land acknowledgment.

6. **APPROVAL OF MINUTES**

6.a. **September 11, 2023, Meeting Minutes**

Motion by Bergan, second by Sundberg, to approve the minutes of the September 11, 2023, City Council meeting, as presented.

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*



Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

10.c.3 **Consideration to Appoint Two (2) Members and Reappoint One (1) Member to the Cultural Affairs Commission**

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

10.c.4 **Consideration to Appoint Seven (6) Members and Reappoint One (1) Member to the Aurora Youth Commission**

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

10.c.5 **Consideration to Appoint Seven (7) Incumbent Members to the Citizens' Water Advisory Commission**

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

Motion by Gardner, second by Jurinsky to approve the Consent Calendar - Motions.

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Marcano, Medina, Murillo, Sundberg, Zvonek

11. **CONSENT CALENDAR – RESOLUTIONS AND ORDINANCES**

*Any member of the Council may request an item to be removed from the Consent Calendar and considered separately. Any item removed will be considered immediately following the adoption of the remainder of the Consent Calendar.*

11.a **Resolutions**

11.a.1 **Porteos Business Improvement District Director Appointment**

**R2023-102** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPOINTING TWO MEMBERS TO THE BOARD OF DIRECTORS OF THE PORTEOS BUSINESS IMPROVEMENT DISTRICT

Cesarina Dancy, Senior Development Project Manager, Office of Development Assistance / Brian Rulla, Assistant City Attorney

11.a.2 **Drainage and Flood Control Improvements for Unnamed Creek Upstream of S. Jericho Way**

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

**R2023-103** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S SUPPORT OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA COLORADO ACTING BY AND THROUGH ITS UTILITY ENTERPRISE AND THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT, d/b/a MILE HIGH FLOOD DISTRICT REGARDING CONSTRUCTION OF FLOOD AND DRAINAGE IMPROVEMENTS FOR UNNAMED CREEK UPSTREAM OF SOUTH JERICHO WAY

James DeHerrera, Planning Services Manager, Aurora Water / Ian Best, Assistant City Attorney

11.a.3 **An Intergovernmental Agreement Regarding Funding of Major Drainageway Planning for East Toll Gate Creek Tributaries**

**R2023-104** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S SUPPORT OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA COLORADO ACTING BY AND THROUGH ITS UTILITY ENTERPRISE, THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT, d/b/a MILE HIGH FLOOD DISTRICT, AND THE SOUTHEAST METRO STORMWATER AUTHORITY REGARDING FUNDING OF MAJOR DRAINAGEWAY PLANNING FOR EAST TOLL GATE CREEK TRIBUTARIES

James DeHerrera, Planning Services Manager, Aurora Water / Ian Best, Assistant City Attorney

11.a.4 **Aurora Arts Ahead: Cultural Arts Plan 2023-36 Approval**

**R2023-105** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S APPROVAL OF THE CITY'S CULTURAL ARTS PLAN

Midori Clark, Director of Library and Cultural Services / Tim Joyce, Assistant City Attorney

Outside Speaker: Kerri Drumm, Purpose Aligned Consulting

11.a.5 **Snow Removal and Plowing Operations on Local Streets**

**R2023-106** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE FORM OF AGREEMENT BETWEEN THE CITY OF

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

AURORA, COLORADO, AND SPECIAL DISTRICT/HOA FOR SNOW REMOVAL AND PLOWING OPERATIONS ON LOCAL STREETS

Waiver of reconsideration requested to facilitate agreement approvals beginning in November.

Sponsor: Françoise Bergan, Council Member

Lynne Center, Deputy Director of Operations, Public Works / Michelle Gardner, Senior Assistant Attorney

11.a.6 **Intergovernmental Agreement with Prairie Point Community Authority Board (CAB) for Ownership and Maintenance of Certain Public Improvements**

**R2023-107** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND THE PRAIRIE POINT COMMUNITY AUTHORITY BOARD REGARDING OWNERSHIP AND MAINTENANCE OF CERTAIN ENCROACHMENT IMPROVEMENTS

Haley B. Johansen, City Engineer, Public Works / Michelle Gardner, Assistant City Attorney

11.a.7 **Arapahoe County Department of Human Services - Aurora Police Department Memorandum of Understanding (MOU)**

**R2023-108** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE AURORA POLICE DEPARTMENT AND ARAPAHOE COUNTY DEPARTMENT OF HUMAN SERVICES CHILD PROTECTION SERVICES

Art Acevedo, Chief of Police / Megan Platt, Assistant City Attorney

11.a.8 **Policy for Honorary Street Naming**

**R2023-109** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADOPTING A POLICY FOR HONORARY STREET NAMING

Sponsor: Curtis Gardner, Mayor Pro Tem

Michelle Gardner, Senior Assistant City Attorney

11.a.9 **Honorary Street Naming of a Portion of E. 16<sup>th</sup> Avenue to Ruben Sims**

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

**Jr. Avenue**

**R2023-110** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE HONORARY STREET NAMING OF A PORTION OF EAST 16TH AVENUE BETWEEN FLORENCE STREET AND EMPORIA STREET TO RUBEN SIMS JR. AVENUE

Sponsor: Curtis Gardner, Mayor Pro Tem

Michelle Gardner, Senior Assistant City Attorney

**11.b Finalizing of Ordinances**

*Ordinances approved unanimously at first reading*

Motion by Gardner, second by Jurinsky to approve the Consent Calendar - Resolutions and Ordinances.

Voting Aye: Bergan, Coombs, Gardner, Jurinsky, Marcano, Medina, Murillo, Sundberg, Zvonek

**12. PUBLIC HEARINGS**

**12.a. Amended and Restated Consolidated Service Plan for Aspen Business Park Metropolitan District, Aurora Crossroads Metropolitan Districts Nos. 1-2 and Crossroads East Metropolitan District**

**R2023-111** A PUBLIC HEARING AND CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE AMENDED AND RESTATED CONSOLIDATED SERVICE PLAN FOR ASPEN BUSINESS PARK METROPOLITAN DISTRICT, AURORA CROSSROADS METROPOLITAN DISTRICT NOS. 1-2, AND CROSSROADS EAST METROPOLITAN DISTRICT AND APPROVING AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND THE DISTRICTS

Cesarina Dancy, Senior Development Project Manager, Office of Development Assistance / Brian Rulla, Assistant City Attorney

Mayor Coffman opened the public hearing.

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

CM Bergan expressed gratitude to first responders while offering prayers for the family affected by the fire tragedy. She reported attending various events, including the Veterans Small Business Conference reception with the mayor, where she emphasized the importance of supporting veterans in finding employment. She also attended the "Cones with a Cop!" event at Dairy Queen, highlighting the positive engagement between police officers and the community. She mentioned hosting a recent town hall and thanked the presenters. Additionally, she congratulated Officer Judy Lutkin on her retirement after more than 30 years of service with the Aurora Police Department, expressing appreciation for her dedication. She also attended the Shareback Event and expressed gratitude for the funds received through the grant program, mentioning CM Sundberg's role in featuring Red-tailed Hawk Park in Ward VI during the event.

19. **ADJOURNMENT**

Mayor Coffman adjourned the regular meeting of the City Council.



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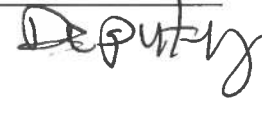
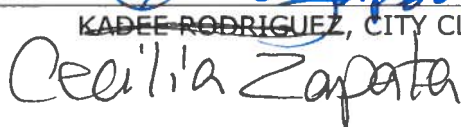
MIKE COFFMAN, MAYOR

ATTEST:



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KADEE RODRIGUEZ, CITY CLERK



◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> An Intergovernmental Agreement (IGA) with Southshore Metropolitan District 2 for Snow Removal and Plowing Operations on Local Streets
<b>Item Initiator:</b> Lynne Center, Deputy Director Public Works Operations
<b>Staff Source/Legal Source:</b> Lynne Center, Deputy Director Public Works Operations/Michelle Gardner, Sr. Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

CONSIDERATION TO APPROVE A RESOLUTION FOR AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA AND SOUTHSHORE METROPOLITAN DISTRICT NO. 2 FOR SNOW REMOVAL AND PLOWING OPERATIONS

Lynne Center, Deputy Director of Operations, Public Works / Michelle Gardner, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

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**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval  
 Forwarded Without Recommendation  Minutes Not Available  
 Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

Following the "Bomb Cyclone" in March 2019, Staff explored options for plowing snow on residential streets. One option we explored was allowing a Metro District to plow snow on public residential streets within the District's boundaries. A pilot program was conducted from January 2020 through June 2022 with the High Plains Metro District serving the Blackstone neighborhood.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

Under the sponsorship of Councilmember Francoise Bergan, on September 25, 2023, Council approved Resolution R2023-106 setting the form for Intergovernmental Agreements (IGAs) allowing interested special districts (Districts) and established homeowner's associations (HOAs) to provide snow removal for residential streets within the District/HOA boundaries. Under this program the District/HOA is required to prepare and submit a Snow and Ice Control Plan that includes an indication of the category storm at which they would begin plowing, a list of equipment that will be used, a list of material that may be used, and contact information for the District/HOA and their plowing operator. The District/HOA is also required to comply with insurance requirements and prepare regular snow event reports throughout the term of the agreement. Agreements can be executed for a period of one to five years. This program allows a District/HOA to plow residential streets within their boundaries, but it does not require them to do so. The agreement can be terminated at any time by either party.

This resolution establishes the program and form of agreement for the program. It also modifies the normal approval process for such agreements through Council and allows them to be brought immediately to a Regular Session of Council, bypassing the Policy Committee meeting and Study Session meeting. Further, it waives the period of reconsideration, but only if the template agreement is used without significant changes.

The Southshore Metropolitan District No. 2 board has executed an IGA that substantially meets the form set in R2023-106 and has submitted a snow and ice control plan, as required.

The term for this agreement is January 1, 2024 through June 30, 2029.

Staff recommends approval of the IGA for snow removal within the Southshore Metropolitan District No. 2 by the resolution included..

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact  
 Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

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**QUESTIONS FOR COUNCIL**

Does City Council approve the resolution for the IGA with Southshore Metropolitan District No. 2 for snow removal and plowing operations on local streets?

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**LEGAL COMMENTS**

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. §29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter §10-12). (M. Gardner)



RESOLUTION NO. R2023-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,  
APPROVING THE AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND  
SOUTHSHORE METROPOLITAN DISTRICT NO. 2 FOR SNOW REMOVAL AND  
PLOWING OPERATIONS ON LOCAL STREETS

WHEREAS, the City of Aurora, Colorado (the “City”), and Southshore Metropolitan District No. 2 (the “District”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City’s Public Works Department is authorized to promulgate rules and regulations for the public right-of-way within the jurisdiction of the City, for all City-owned public streets, roadway and way dedicated for the use of the public, and to provide snow plowing and removal operations thereto; and

WHEREAS, due to the necessity of the City to prioritize snow removal on City roads to best facilitate winter travel on all City roads, the City is generally unable to assign a high priority for snow removal on internal subdivision roads or other relatively lower use City roads, such as the roads described in the Agreement Between the City of Aurora, Colorado and Southshore Metropolitan District No. 2 for Snow Removal and Plowing Operations (“Agreement”); and

WHEREAS, the District provides certain operations and maintenance services within the District area and the roads identified in the Agreement are internal to said subdivision; and

WHEREAS, the District may desire to have snow removed or plowed from the City roads described in the Agreement on a more frequent basis than the City is able to provide, given the overall City road priority and demand for snow removal or plowing citywide; and

WHEREAS, the City is agreeable to authorizing the District to privately remove or plow snow or contract for the private removal or plowing of snow on the roads described herein, subject to the terms and conditions for such snow removal or plowing operations as are set forth in the Agreement; and

WHEREAS, the District's Board met on October 10, 2023 to request the Agreement and voted in support of the Agreement; and

WHEREAS, the City Council is authorized by City Charter 10-12 to enter into this type of agreement; and

WHEREAS, pursuant to City Charter 3-9 the City Council shall have all legislative powers of the City and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter; and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the execution of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Agreement between the City and Southshore Metropolitan District No. 2 for Snow Removal and Plowing Operations is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*RLA*  
*Michelle Gardner*  
\_\_\_\_\_  
MICHELLE GARDNER, Sr. Assistant City Attorney

**AGREEMENT BETWEEN  
THE CITY OF AURORA, COLORADO  
AND THE SOUTHSHORE METROPOLITAN DISTRICT NO. 2 SPECIAL DISTRICT  
FOR SNOW REMOVAL AND PLOWING OPERATIONS ON LOCAL STREETS  
(SOUTHSHORE)**

**THIS AGREEMENT FOR SNOW REMOVAL AND PLOWING OPERATIONS (Agreement)** is dated this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the City of Aurora, Colorado, a home rule municipal corporation (the “City”), and the Southshore Metropolitan District No. 2 Special District, a quasi- corporation and political subdivision of the State of Colorado (the “District”), collectively referred to as the “Parties.”

**RECITALS**

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

**WHEREAS**, the City’s Public Works Department is authorized to promulgate rules and regulations for the public right-of-way within the jurisdiction of the City, over all City-owned public streets, roadway and way dedicated for the use of the public, and to provide snow plowing and removal operations thereto; and

**WHEREAS**, due to the necessity for the City to prioritize snow removal on City roads to best facilitate winter travel on all City roads, the City is generally unable to assign a high priority for snow removal on internal subdivision roads or other relatively lower use City roads, such as the roads described in this Agreement; and

**WHEREAS**, the District/HOA provides certain operations and maintenance services within the Wheatlands subdivision and the roads identified in this Agreement are internal to said subdivision; and

**WHEREAS**, the District/HOA may desire to have snow removed or plowed from the City roads described in this Agreement on a more frequent basis than the City is able to provide, given the overall City road priority and demand for snow removal or plowing citywide; and

**WHEREAS**, the City is agreeable to authorizing the District/HOA to privately remove or plow snow or contract for the private removal or plowing of snow on the roads described herein, subject to the terms and conditions for such snow removal or plowing operations as are set forth in this Agreement; and

**WHEREAS**, the City is not relinquishing its authority to regulate streets and alleys, pursuant to Section 31-15-702, C.R.S., by agreeing to authorize the District/HOA to perform snow removal services or plow snow or contract for said services, for the identified roads or road segments in the attached Exhibit A; and

**WHEREAS**, the District/HOA Board met on October 10, 2023 and is in support of this Agreement; and

**WHEREAS**, the City Council is authorized by City Charter 10-12 to enter into this type of agreement; and

**WHEREAS**, pursuant to City Charter 3-9, City Council shall have all legislative powers of the City and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter.

**NOW, THEREFORE**, in consideration of the mutual promises, authorizations, and conditions set forth in this Agreement, the Parties hereto agree to the following terms and conditions:

### **AGREEMENT**

The District/HOA is hereby authorized to remove or plow snow, or contract for said services, during the term of this Agreement from the City roads or road segments that are identified in Exhibit A, which is attached hereto and is incorporated into this Agreement by this reference, and from no other City roads.

1. The Term of this Agreement shall commence on the 1st day of January 2024, and shall end on the 30<sup>th</sup> day of June, 2029, unless sooner terminated in accordance with the provisions of this Agreement.

2. Prior to commencing any snow removal or plowing operations under this Agreement, the District/HOA shall identify to the City for its approval any contractors and/or subcontractors (the "Operator") who will be performing the snow removal or plowing operations on behalf of the District/HOA. In the event that the District/HOA desires or needs to change or replace such Operator during the term of this Agreement, the District/HOA shall notify the City and shall not perform or authorize the performance of any further snow removal or plowing operations until the City approves the new or replaced Operator. The City may withhold approval of any proposed Operator for any reasonable and lawful cause.

3. In performing the snow removal or plowing operations authorized hereunder, the District/HOA and any Operator shall comply with the provisions of Exhibit B attached hereto and incorporated herein by this reference, and the District/HOA and any Operator shall exercise all reasonable and due care in the performance of the snow removal or plowing activities authorized under this Agreement and shall, jointly and severally, be responsible for any damages caused to persons or property, directly or indirectly, in the performance of the snow removal or plowing activities.

4. Insurance: The District/HOA and its Operator shall provide insurance as set forth in the attached Exhibit C. All equipment used in the performance of the snow removal or plowing activities authorized under this Agreement and the performance of such snow removal or plowing activities shall comply with all applicable federal, state, and local laws, ordinances, and rules and regulations.

5. This Agreement, and any issues involving this Agreement, are subject to and shall be interpreted under the law of the State of Colorado and the rules and regulations of the City. Court venue and jurisdiction shall be in the Colorado District/HOA Court for Arapahoe County.

The Parties agree that this Agreement shall be deemed to have been made in, and the place of performance is deemed to be in, Arapahoe County, State of Colorado.

6. Any dispute as to the interpretation of this Agreement or the requirements stated in Exhibit B shall be submitted to the City's Director of Public Works or his/her designee. The Director or his/her designee shall review and make a written decision on the dispute within ten (10) City business days of receiving the dispute. The Director's decision shall be final and binding on the Parties.

7. The performance of any City and District/HOA obligations under or related to this Agreement, if any, is expressly subject to the appropriation of funds by the Aurora City Council or the District/HOA Board, respectively. Nevertheless, it is expressly understood and agreed that this Agreement and the snow removal or plowing activities authorized thereunder are for the benefit of the District/HOA and shall be at the sole expense of the District/HOA. The City has no obligation to pay for any of or any portion of the snow removal or plowing activities authorized hereunder and the District/HOA is entitled to no compensation from the City for its performance of same.

8. This Agreement may be amended only in writing by the duly authorized governmental bodies of the Parties and in the same form as this Agreement.

9. Notices. All notices shall be sent to the following addresses:

For the District/HOA: Southshore Metropolitan District No. 2  
c/o TBD  
44 Cook St., Suite 620  
Denver, CO 80206

For the City: Public Works Department  
Attn: Deputy Director of Public Works - Operations  
15151 E. Alameda Pkwy, Ste. 3300  
Aurora, CO 80112

10. THIS AGREEMENT IS MADE AT THE REQUEST OF THE DISTRICT/HOA FOR THE DISTRICT/HOA'S BENEFIT. THE DISTRICT/HOA DOES HEREBY WAIVE, REMISE, AND RELEASE ANY CLAIM, RIGHT, OR CAUSE OF ACTION THE DISTRICT/HOA MAY HAVE OR WHICH MAY ACCRUE IN THE FUTURE, WHETHER UNDER THEORIES OF CONTRACT OR ANY OTHER CAUSE OF ACTION WHATSOEVER, AGAINST THE CITY ARISING IN WHOLE OR IN PART FROM THIS AGREEMENT.

11. By entering into this Agreement, the Parties do not waive any governmental immunity available to them or their elected officials, employees or agents under CRS 24-10-101, *et seq.*, or any other federal or state law or the common law, and nothing in this Agreement shall

be interpreted to effect a waiver of any such governmental immunity available to the Parties, their elected officials, employees or agents.

12. Either party may terminate this Agreement for convenience upon thirty (30) calendar day's prior written notice to the other party. Any notice of termination shall state the actual effective date of termination. Upon termination of this Agreement, all rights and obligations thereunder shall terminate, except that the District/HOA shall remain responsible and liable for any damages caused, directly or indirectly, by its performance under this Agreement.

13. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or individual homeowner or other person or entity whatsoever on or under this Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

14. This Agreement constitutes the entire Agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein.

15. The District/HOA shall not assign or otherwise transfer this Agreement or any right or obligation hereunder without the prior lawful approval of the authorized governmental bodies of the Parties and in the same form as this Agreement.

16. This Agreement authorizes the District/HOA to conduct snow removal operations on the identified City roads, but the District/HOA shall have the right to determine, in its sole and absolute discretion, the frequency of such snow removal operations, if at all. Nothing in the Agreement shall be construed or interpreted to require the District/HOA to conduct any snow removal operations on City-owned roads.

17. To the fullest extent permissible under the law of the State of Colorado, the District/HOA agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the District/HOA's obligations or actions or inactions, and the Operator's obligations or actions or inactions, under this Agreement. The District/HOA shall promptly repair to the City's standards and satisfaction, or pay to the City the costs of repairing, any damage to City roads, curbs, gutters, sidewalks, signage, or any other City property resulting from operations or activities under this Agreement. The District/HOA's indemnity obligation under this Paragraph shall be for the full amount of any such loss, damages, injuries, claims, cause or causes of action or any liability whatsoever, including attorneys' fees, and court costs, and shall not in any way be capped or limited by the insurance provisions of this Agreement.

18. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full

force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings. The Parties hereto agree that this Agreement and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes. Any electronic signature so affixed to this Agreement or any supplement or consent relating thereto shall carry the full legal force and effect of any original, handwritten signature

**IN WITNESS WHEREOF**, the Parties hereto set their hands in agreement as of the date first written above.

For: **CITY OF AURORA**

By \_\_\_\_\_  
MIKE COFFMAN, MAYOR

Attested to:

\_\_\_\_\_  
KADEE RODRIGUEZ, CITY CLERK

Approved as to Form:

\_\_\_\_\_  
MICHELLE GARDNER, SR. ASST. CITY ATTORNEY

For: **Southshore Metropolitan District No. 2**

By  \_\_\_\_\_  
VICE PRESIDENT

Attested to:

 \_\_\_\_\_  
OFFICER OF THE DISTRICT

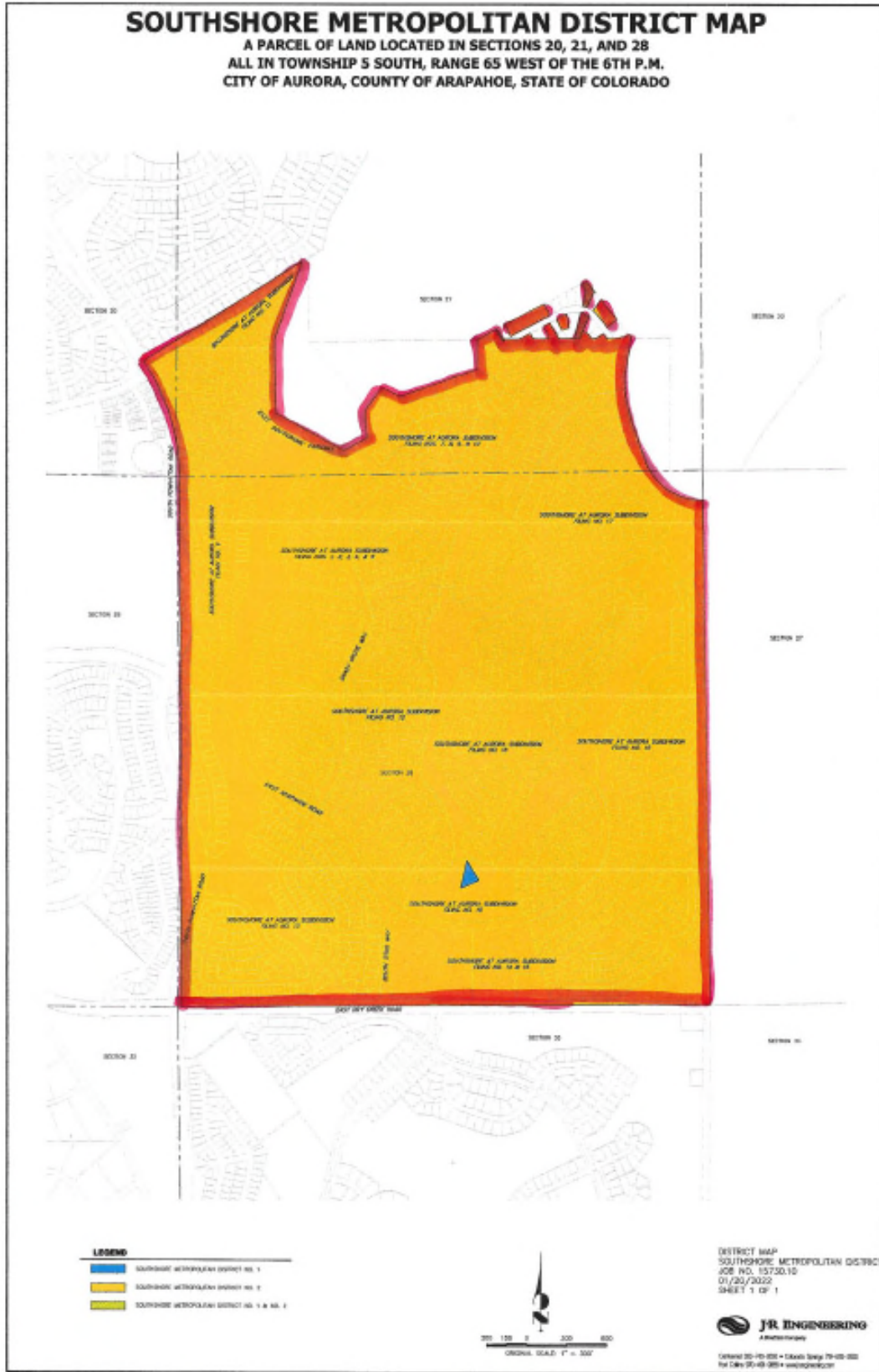


## **EXHIBIT A**

Snow removal or plowing operations authorized under this Agreement are permitted on the following City Roads:

All City Roads within the Southshore Metropolitan District No. 2 Special District/HOA, as generally depicted within the red border as shown on the attached map.

[See attached map.]



## EXHIBIT B

### General Considerations

- All snow removal or plowing services to be provided shall be performed and completed in a similar manner as performed by the City upon other public roads, exercising all reasonable and due care, and in good and workman like manner.
- The Operator is to report directly to the District/HOA Manager for the District/HOA.

### Prior to Winter Operations

The Operator shall be responsible for obtaining any other City licenses and permits to operate within the public right-of-way that may be required under the City Code.

The District/HOA shall file a snow and ice control plan with the City of Aurora no later than October 1<sup>st</sup> of any year covered by this agreement. The plan shall follow a city provided template and include the following information:

- A. District contact. This person shall be available to respond to city staff during every snow event.
- B. Operator contact. This person shall be the on-site operations supervisor during snow events and will be available to respond to city Staff during every snow event.
- C. List of Equipment - The District/HOA in collaboration with the Operator must submit and update as necessary, a complete list of equipment planned for winter operations. The list shall include the following information:
  - Types & makes of vehicles including trucks, loaders and graders,
  - Types & makes of plow,
  - Types of blades (carbide /regular steel) must be equipped with a flexible edge,
  - Models of spreaders (sand and sand/salt mixtures not allowed) ,
  - Types & models of material distribution control units,
  - Types & models of pre-wetting systems; (is this allowed?)
  - Types & models of liquid pre-treatment systems, if applicable.
- D. List of materials to be used during operations. The District/HOA will be responsible for any damage caused, or mitigation required, due to their use of these materials. Note, materials used must be approved by the City of Aurora and sand or sand/salt mixtures will not be allowed. This list shall include:
  - Commercial or common name of material,
  - Primary use of the material,
  - Primary distribution method including which equipment is used from the equipment list,
  - Material supplier(s),
  - Material Safety Data Sheets (MSDS) for all materials.
- E. Category of storm (as classified by City of Aurora Snow and Ice Control Plan) for which operations will occur.

- F. Frequency and duration of snow operations during a snow event.
- G. Locations for snow storage. HOA/SD is responsible for locating locations for snow storage and obtaining permission to utilize said locations as well as any erosion control measures required. Locations cannot include public rights of way or city-owned property without prior written permission.

During Winter Operations

Event Logs - If deployed during a snow event, the Operator shall complete a a daily event log using a city provided template. For events of a 24-hour or less duration, the daily event log can serve as the summary log. For events greater than 24-hours in duration, the District/HOA shall submit a summary log for the event to the City's Public Works Department within 5 working days of the end of the snow event.

Monthly Report - On a monthly basis, or when requested by the City, the District/HOA shall submit a year-to-date summary of deployments grouped by snow event to the City's Public Works Department. This report is required even if the Operator did not deploy. The final monthly report for any season shall be submitted prior to June 1<sup>st</sup> of any year covered by this contract.

## EXHIBIT C

### INSURANCE REQUIREMENTS

**Insurance and Indemnities:** Prior to commencement of this Agreement, the District/HOA and its designated Operator, shall provide a certificate of insurance evidencing the following coverages:

- A. **Commercial General Liability Insurance.** During the term of this Agreement, the District/HOA and the Operator shall provide general liability coverage against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate.
- B. **Commercial Automobile Liability Insurance.** The District/HOA and Operator shall maintain business automobile liability covering liability arising out of the operation of any vehicle (including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident.
- C. **Excess or Umbrella Liability.** The District/HOA and the Operator shall maintain an Excess or Umbrella Liability on an occurrence basis in excess of the underlying insurance described in (a), which has coverages as broad as the underlying policies, with a limit of Two Million Dollars (\$2,000,000).
- D. **Workers' Compensation or Employers' Liability Insurance.** The Operator shall provide proof of workers' compensation coverage with limits as required by the laws of the State of Colorado. Additionally, the Operator shall provide proof of Employers' Liability Insurance with limits as follows:
  - \$500,000 bodily injury each accident
  - \$500,000 bodily injury each disease
  - \$500,000 bodily injury disease aggregate.

The Operator will provide to the City a copy of the Operator's insurance which evidences insurance coverages and limits as indicated in this agreement.

- E. **City as Additional Insured.** All insurance policies required by this agreement, except workers' compensation, shall name the City, its officers, employees and agents as an additional insured by endorsement and said coverage shall contain a waiver of subrogation. The Operator shall provide a copy of an endorsement providing this coverage.
- F. **Limits of Insurance.** The total limits of general and excess liability insurance set forth above may be provided to the City using a combination of primary and excess liability insurance.

- G. Certificates of Insurance.** Upon the execution of this Agreement, the District/HOA and the Operator shall provide certificates of insurance to the City demonstrating that at the minimum coverages required herein are in effect. The District/HOA agrees that the required coverages will not be reduced, canceled, non-renewed or materially changed without thirty (30) days prior written notice to the City. All certificates of insurance must be kept in force throughout the duration of the services. If any of District/HOA's or the Operator's coverage is renewed at any time prior to the expiration of this Agreement, the District/HOA and the Operator shall be responsible for obtaining updated insurance certificates from the respective insurance carriers and forwarding the replacement certificates to the City within ten (10) days of the expiration date of any previously delivered certificate.

With respect to the Operator, the minimum A.M. Best rating of each primary insurer shall be A-X and the minimum A.M. Best rating of each excess insurer shall be A- VIII. The District/HOA and the Operator shall provide copies of insurance policies to the City Risk Manager upon request.

Any of the minimum limits of insurance set out herein may be raised or lowered at the sole discretion of the Risk Manager for the City of Aurora in response to the particular circumstances giving rise to the Agreement. **The District/HOA's or the Operator's policy will be primary and non-contributory with respect to any and all self-insurance or insurance policies purchased by the City.**

RESOLUTION NO. R2023-106

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,  
APPROVING THE FORM OF AGREEMENT BETWEEN THE CITY OF AURORA,  
COLORADO AND SPECIAL DISTRICT/HOA FOR SNOW REMOVAL AND PLOWING  
OPERATIONS ON LOCAL STREETS

WHEREAS, the City of Aurora, Colorado (the “City”), and Title 32 special districts (“Districts”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City of Aurora, Colorado (the “City”), and homeowner associations (“HOAs”), collectively “the Parties”, as government agencies, are authorized to contract with one another to provide any function, service or coordination lawfully authorized to each; and

WHEREAS, the City’s Public Works Department is authorized to promulgate rules and regulations for the public right-of-way within the jurisdiction of the City, for all City-owned public streets, roadway and way dedicated for the use of the public, and to provide snow plowing and removal operations thereto; and

WHEREAS, due to the necessity of the City to prioritize snow removal on City roads to best facilitate winter travel on all City roads, the City is generally unable to assign a high priority for snow removal on internal subdivision roads or other relatively lower use City roads; and

WHEREAS, Districts and HOAs provide certain operations and maintenance services within their areas and roads that are internal and local to their subdivisions; and

WHEREAS, Districts and HOAs in Aurora may desire to have snow removed or plowed from City roads described on a more frequent basis than the City is able to provide, given the overall City road priority and demand for snow removal or plowing citywide; and

WHEREAS, the City is agreeable to authorizing Districts and HOAs to privately remove or plow snow or contract for the private removal or plowing of snow on the roads described herein, subject to the terms and conditions for such snow removal or plowing operations as are set forth in the attached Form of Agreement between the City of Aurora and Special Districts/HOAs for Snow Removal and Plowing Operations on Local Streets (“Agreement”); and

WHEREAS, the Districts and HOAs would need to meet certain criteria, included in the attached Agreement, in order to be authorized to perform such snow removal and plowing operations on local streets; and

WHEREAS, the City Council is authorized by City Charter 10-12 to approve this Agreement template; and

WHEREAS, pursuant to City Charter 3-9 the City Council shall have all legislative powers of the City and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by the Charter; and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the Form of Agreement between the City and Special Districts/HOAs for Snow Removal and Plowing Operations on Local Streets.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

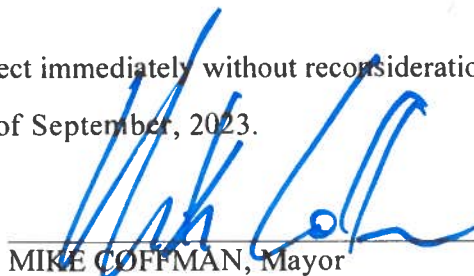
Section 1. The Form of Agreement between the City and Special Districts/HOAs for Snow Removal and Plowing Operations on Local Streets is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

Section 4. This resolution shall take effect immediately without reconsideration.

RESOLVED AND PASSED this 25th day of September, 2023.

  
MIKE COFFMAN, Mayor

ATTEST:

  
KADEE RODRIGUEZ, City Clerk Deputy  
Cecilia Zapata  
APPROVED AS TO FORM:



RLA

  
MICHELLE GARDNER, Sr. Assistant City Attorney



## MINUTES

### Regular Meeting of the Aurora City Council

Monday, September 25, 2023

1. **RECONVENE REGULAR MEETING OF SEPTEMBER 25, 2023, AND CALL TO ORDER**

Mayor Coffman reconvened the regular meeting of the City Council for September 25, 2023, at 6:30 p.m.

2. **ROLL CALL**– Kadee Rodriguez, City Clerk

COUNCIL MEMBERS PRESENT: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Marcano, Medina, Murillo, Sundberg, Zvonek

COUNCIL MEMBERS ABSENT: Angela Lawson

*Public call-in instructions were provided in both English and Spanish.*

3. **INVOCATION/MOMENT OF SILENCE**

Mayor Coffman led the prayer for the September 25<sup>th</sup> Council Meeting. He asked for a moment of silence to commemorate the two lives lost in a house fire the previous week, despite the brave efforts of Aurora Fire Rescue.

4. **PLEDGE OF ALLEGIANCE** (all standing)

5. **EXECUTIVE SESSION UPDATE**

Mayor Coffman provided an update on the Executive Session where they interviewed the interim city manager for the position of city manager.

Mayor Coffman read the land acknowledgment.

6. **APPROVAL OF MINUTES**

6.a. **September 11, 2023, Meeting Minutes**

Motion by Bergan, second by Sundberg, to approve the minutes of the September 11, 2023, City Council meeting, as presented.

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

10.c.3 **Consideration to Appoint Two (2) Members and Reappoint One (1) Member to the Cultural Affairs Commission**

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

10.c.4 **Consideration to Appoint Seven (6) Members and Reappoint One (1) Member to the Aurora Youth Commission**

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

10.c.5 **Consideration to Appoint Seven (7) Incumbent Members to the Citizens' Water Advisory Commission**

Kadee Rodriguez, City Clerk / Tim Joyce, Assistant City Attorney

Motion by Gardner, second by Jurinsky to approve the Consent Calendar - Motions.

Voting Aye: Mayor Coffman, Bergan, Coombs, Gardner, Jurinsky, Marcano, Medina, Murillo, Sundberg, Zvonek

11. **CONSENT CALENDAR – RESOLUTIONS AND ORDINANCES**

*Any member of the Council may request an item to be removed from the Consent Calendar and considered separately. Any item removed will be considered immediately following the adoption of the remainder of the Consent Calendar.*

11.a **Resolutions**

11.a.1 **Porteos Business Improvement District Director Appointment**

**R2023-102** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPOINTING TWO MEMBERS TO THE BOARD OF DIRECTORS OF THE PORTEOS BUSINESS IMPROVEMENT DISTRICT

Cesarina Dancy, Senior Development Project Manager, Office of Development Assistance / Brian Rulla, Assistant City Attorney

11.a.2 **Drainage and Flood Control Improvements for Unnamed Creek Upstream of S. Jericho Way**

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

**R2023-103** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S SUPPORT OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA COLORADO ACTING BY AND THROUGH ITS UTILITY ENTERPRISE AND THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT, d/b/a MILE HIGH FLOOD DISTRICT REGARDING CONSTRUCTION OF FLOOD AND DRAINAGE IMPROVEMENTS FOR UNNAMED CREEK UPSTREAM OF SOUTH JERICHO WAY

James DeHerrera, Planning Services Manager, Aurora Water / Ian Best, Assistant City Attorney

11.a.3 **An Intergovernmental Agreement Regarding Funding of Major Drainageway Planning for East Toll Gate Creek Tributaries**

**R2023-104** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S SUPPORT OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA COLORADO ACTING BY AND THROUGH ITS UTILITY ENTERPRISE, THE URBAN DRAINAGE AND FLOOD CONTROL DISTRICT, d/b/a MILE HIGH FLOOD DISTRICT, AND THE SOUTHEAST METRO STORMWATER AUTHORITY REGARDING FUNDING OF MAJOR DRAINAGEWAY PLANNING FOR EAST TOLL GATE CREEK TRIBUTARIES

James DeHerrera, Planning Services Manager, Aurora Water / Ian Best, Assistant City Attorney

11.a.4 **Aurora Arts Ahead: Cultural Arts Plan 2023-36 Approval**

**R2023-105** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, EXPRESSING THE AURORA CITY COUNCIL'S APPROVAL OF THE CITY'S CULTURAL ARTS PLAN

Midori Clark, Director of Library and Cultural Services / Tim Joyce, Assistant City Attorney

Outside Speaker: Kerri Drumm, Purpose Aligned Consulting

11.a.5 **Snow Removal and Plowing Operations on Local Streets**

**R2023-106** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE FORM OF AGREEMENT BETWEEN THE CITY OF

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

AURORA, COLORADO, AND SPECIAL DISTRICT/HOA FOR SNOW REMOVAL AND PLOWING OPERATIONS ON LOCAL STREETS

Waiver of reconsideration requested to facilitate agreement approvals beginning in November.

Sponsor: Françoise Bergan, Council Member

Lynne Center, Deputy Director of Operations, Public Works / Michelle Gardner, Senior Assistant Attorney

11.a.6 **Intergovernmental Agreement with Prairie Point Community Authority Board (CAB) for Ownership and Maintenance of Certain Public Improvements**

**R2023-107** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND THE PRAIRIE POINT COMMUNITY AUTHORITY BOARD REGARDING OWNERSHIP AND MAINTENANCE OF CERTAIN ENCROACHMENT IMPROVEMENTS

Haley B. Johansen, City Engineer, Public Works / Michelle Gardner, Assistant City Attorney

11.a.7 **Arapahoe County Department of Human Services - Aurora Police Department Memorandum of Understanding (MOU)**

**R2023-108** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE AURORA POLICE DEPARTMENT AND ARAPAHOE COUNTY DEPARTMENT OF HUMAN SERVICES CHILD PROTECTION SERVICES

Art Acevedo, Chief of Police / Megan Platt, Assistant City Attorney

11.a.8 **Policy for Honorary Street Naming**

**R2023-109** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADOPTING A POLICY FOR HONORARY STREET NAMING

Sponsor: Curtis Gardner, Mayor Pro Tem

Michelle Gardner, Senior Assistant City Attorney

11.a.9 **Honorary Street Naming of a Portion of E. 16<sup>th</sup> Avenue to Ruben Sims**

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

**Jr. Avenue**

**R2023-110** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE HONORARY STREET NAMING OF A PORTION OF EAST 16TH AVENUE BETWEEN FLORENCE STREET AND EMPORIA STREET TO RUBEN SIMS JR. AVENUE

Sponsor: Curtis Gardner, Mayor Pro Tem

Michelle Gardner, Senior Assistant City Attorney

**11.b Finalizing of Ordinances**

*Ordinances approved unanimously at first reading*

Motion by Gardner, second by Jurinsky to approve the Consent Calendar - Resolutions and Ordinances.

Voting Aye: Bergan, Coombs, Gardner, Jurinsky, Marcano, Medina, Murillo, Sundberg, Zvonek

**12. PUBLIC HEARINGS**

**12.a. Amended and Restated Consolidated Service Plan for Aspen Business Park Metropolitan District, Aurora Crossroads Metropolitan Districts Nos. 1-2 and Crossroads East Metropolitan District**

**R2023-111** A PUBLIC HEARING AND CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE AMENDED AND RESTATED CONSOLIDATED SERVICE PLAN FOR ASPEN BUSINESS PARK METROPOLITAN DISTRICT, AURORA CROSSROADS METROPOLITAN DISTRICT NOS. 1-2, AND CROSSROADS EAST METROPOLITAN DISTRICT AND APPROVING AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND THE DISTRICTS

Cesarina Dancy, Senior Development Project Manager, Office of Development Assistance / Brian Rulla, Assistant City Attorney

Mayor Coffman opened the public hearing.

- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*

CM Bergan expressed gratitude to first responders while offering prayers for the family affected by the fire tragedy. She reported attending various events, including the Veterans Small Business Conference reception with the mayor, where she emphasized the importance of supporting veterans in finding employment. She also attended the "Cones with a Cop!" event at Dairy Queen, highlighting the positive engagement between police officers and the community. She mentioned hosting a recent town hall and thanked the presenters. Additionally, she congratulated Officer Judy Lutkin on her retirement after more than 30 years of service with the Aurora Police Department, expressing appreciation for her dedication. She also attended the Shareback Event and expressed gratitude for the funds received through the grant program, mentioning CM Sundberg's role in featuring Red-tailed Hawk Park in Ward VI during the event.

19. **ADJOURNMENT**

Mayor Coffman adjourned the regular meeting of the City Council.



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MIKE COFFMAN, MAYOR

ATTEST:



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KADEE RODRIGUEZ, CITY CLERK

Cecilia Zapata

Deputy



- ◆ *The City Charter prescribes the Mayor may vote on resolutions and ordinances only to create or break a tie vote of Council Members present. The Mayor Pro-Tem is always permitted to vote on all items.*



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> An Intergovernmental Agreement (IGA) with Colorado Department of Transportation (CDOT) for Laredo St. Over High Line Canal Bridge Replacement Project (Resolution)
<b>Item Initiator:</b> Bret Banwart, Engineering Supervisor, Public Works
<b>Staff Source/Legal Source:</b> Bret Banwart, Engineering Supervisor / Michelle Gardner, Senior Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** 12/11/2023

**Regular Meeting:** 12/18/2023

### ITEM DETAILS

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated Presentation/discussion time for Study Session

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA AND COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR THE LAREDO STREET OVER HIGH LINE CANAL BRIDGE REPLACEMENT PROJECT  
 Bret Banwart, Engineering Supervisor, Public Works / Michelle Gardner, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- |   |  |
|---|--|
| <input type="checkbox"/> Approve Item and Move Forward to Study Session   | <input type="checkbox"/> Approve Item as proposed at Study Session   |
| <input checked="" type="checkbox"/> Approve Item and Move Forward to Regular Meeting  | <input type="checkbox"/> Approve Item as proposed at Regular Meeting |
| <input type="checkbox"/> Information Only   |  |
| <input type="checkbox"/> Approve Item with Waiver of Reconsideration<br>Reason for waiver is described in the Item Details field. |  |

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** Transportation, Airports & Public Works

**Policy Committee Date:** 10/26/2023

### Action Taken/Follow-up: *(Check all that apply)*

Recommends Approval

Does Not Recommend Approval

Forwarded Without Recommendation

Recommendation Report Attached

Minutes Attached

Minutes Not Available

**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

Item was introduced in the TAPS meeting on October 26, 2023 and was recommended for approval.

**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

The City of Aurora applied for a grant through the Colorado Municipal League (CML) for Colorado Department of Transportation's (CDOT's) Off-System Bridge Program (BRO), awarded by the Special Highway Committee (SHC), and administered by CDOT. Funds from this program are distributed to counties and municipalities for bridges that are normally considered in poor, or structurally deficient, condition for replacements projects.

Aurora staff identified the Laredo St. bridge over High Line Canal (HLC) as one of our structures identified as poor condition that met eligibility requirements for replacement (design and construction) funding through the grant program.

City staff submitted the grant application in October 2022 and the SHC notified the City that this project was selected for funding in April 2023. The project was awarded \$1,778,960 of federal and state funding for the purposes of rehabilitation or replacement of existing bridges in poor condition. The project will include evaluation, design, and construction of the replacement of Laredo St. over HLC bridge including environmental clearances. Additionally, some minor road and channel improvements will be provided.

The City is contributing a local match of 20% or \$444,740 for design and construction as shown in the table below. Local match money is currently in org 49821 – Bridge Maintenance Funds. Environmental study and design for this project will occur in 2024 and 2025, with anticipated construction completion by 2027.

The grant funding is for Design and Construction.

Entity	Contribution	Percentage
CDOT (BRO)	\$1,778,960	80%
Local (City of Aurora)	\$444,740	20%
<b>Grant TOTAL</b>	<b>\$2,223,700</b>	

**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

Local match funds (\$444,740) is available and budgeted in Org 49821 – Bridge Maintenance Funds.



**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A. Workload will be absorbed into FTE positions in Transportation Project Delivery unit of Public Works Engineering.

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**QUESTIONS FOR COUNCIL**

Does Council support the Resolution and the Intergovernmental Agreement between Colorado Department of Transportation and City of Aurora for the Laredo St. over High Line Canal Bridge Replacement Project?

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**LEGAL COMMENTS**

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (C.R.S. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment, or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)

RESOLUTION NO. R2023 - \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA,  
COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF AURORA AND COLORADO DEPARTMENT OF  
TRANSPORTATION (CDOT) FOR THE LAREDO STREET OVER HIGH LINE CANAL  
BRIDGE REPLACEMENT PROJECT

WHEREAS, the City of Aurora, Colorado (the “City”), and the State of Colorado Department of Transportation (“CDOT”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City applied for a grant through the Colorado Municipal League (CML) for Colorado Department of Transportation’s (CDOT) Off-System Bridge Program (BRO), awarded by the Special Highway Committee (SHC), and administered by CDOT; and

WHEREAS, funding from the grant for the BRO program are distributed to counties and municipalities for bridges that are normally considered in poor, or structurally deficient, condition; and

WHEREAS, City staff identified the Laredo Street bridge over High Line Canal (HLC) as one of the structures identified as poor condition that met eligibility requirements for replacement (design and construction) funding through the grant program (“Project”); and

WHEREAS, City staff submitted the grant application in October 2022 and the SHC notified the City that the Project was selected to receive design and construction funding in April 2023; and

WHEREAS, the Project will include evaluation, design, and construction of the Laredo Street over HLC bridge, environmental clearances, and some minor road and channel improvements; and

WHEREAS, the Project was awarded \$1,778,960 of federal and state funding for the purposes of rehabilitation or replacement of existing bridges in poor condition; and

WHEREAS, the City is contributing a local match of 20% or \$444,740, with funding from CDOT and the City totaling \$2,223,700 for the Project; and

WHEREAS, Section 10-12 of the City Charter authorizes City Council to approve, by resolution, the execution of contracts, and amendments thereto, with other governmental units for furnishing or receiving commodities or services; and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interest of the City and its citizens to authorize the execution of the Intergovernmental Agreement between the City and CDOT for the Laredo Street over High Line Canal Bridge Replacement Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Intergovernmental Agreement Between the City of Aurora and CDOT for the Laredo Street over High Line Canal Bridge Replacement Project is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the Intergovernmental Agreement in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All prior Resolutions or any parts that are inconsistent herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*Michelle Gardner* <sup>RLA</sup>  
\_\_\_\_\_  
MICHELLE GARDNER, Sr. Assistant City Attorney

**STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT**  
**Signature and Cover Page**

<b>State Agency</b> Department of Transportation		<b>Agreement Routing Number</b> 24-HA1-XC-00193	
<b>Local Agency</b> CITY OF AURORA		<b>Agreement Effective Date</b> The later of the effective date or August 08, 2023	
<b>Agreement Description</b> LAREDO ST BRIDGE REPLACEMENT		<b>Agreement Expiration Date</b> August 07, 2033	
<b>Project #</b> BRO M055- 064 (25847)	<b>Region #</b> R1	<b>Contract Writer</b> DMM	<b>Agreement Maximum Amount</b> \$2,223,700.00

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

<b>LOCAL AGENCY</b> CITY OF AURORA  <hr/> By: Mike Coffman, Mayor  Date: _____	<b>STATE OF COLORADO</b> Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director  <hr/> Keith Stefanik, P.E., Chief Engineer  Date: _____
Additional Local Agency Signatures Attest:  <hr/> Kadee Rodriguez, City Clerk  Date: _____  Approved as to Form: _____ Michelle Gardner, Sr. Assistant City Attorney  Date: _____	<b>LEGAL REVIEW</b> Philip J. Weiser, Attorney General  <hr/> Assistant Attorney General  By: (Print Name and Title)  Date: _____
In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate. <b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b>  By: _____ Department of Transportation  Effective Date: _____	

**TABLE OF CONTENTS**

1. PARTIES .....	2
2. TERM AND EFFECTIVE DATE .....	2
3. AUTHORITY .....	3
4. PURPOSE .....	4
5. DEFINITIONS .....	4
6. SCOPE OF WORK.....	7
7. PAYMENTS.....	11
8. REPORTING - NOTIFICATION .....	15
9. LOCAL AGENCY RECORDS .....	16
10. CONFIDENTIAL INFORMATION-STATE RECORDS .....	17
11. CONFLICTS OF INTEREST.....	18
12. INSURANCE .....	18
13. BREACH .....	20
14. REMEDIES .....	20
15. DISPUTE RESOLUTION .....	22
16. NOTICES AND REPRESENTATIVES .....	22
17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION .....	23
18. GOVERNMENTAL IMMUNITY .....	24
19. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....	24
20. GENERAL PROVISIONS .....	24
21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).....	27
22. FEDERAL REQUIREMENTS.....	29
23. DISADVANTAGED BUSINESS ENTERPRISE (DBE).....	29

- EXHIBIT A, SCOPE OF WORK
- EXHIBIT B, SAMPLE OPTION LETTER
- EXHIBIT C, FUNDING PROVISIONS (Budget)
- EXHIBIT D, LOCAL AGENCY RESOLUTION
- EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST
- EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS
- EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE
- EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES
- EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS
- EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS
- EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS
- EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM
- EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS
- EXHIBIT N, FEDERAL TREASURY PROVISIONS
- EXHIBIT O, AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS
- EXHIBIT P, SLFRF SUBRECIPIENT QUARTERLY REPORT
- EXHIBIT Q, SLFRF REPORTING MODIFICATION FORM
- EXHIBIT R, APPLICABLE FEDERAL AWARDS
- EXHIBIT S, PII CERTIFICATION
- EXHIBIT T, CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

**1. PARTIES**

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

**2. TERM AND EFFECTIVE DATE**

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase (“Phase Performance Period(s)”). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; except as described in **§7.D**; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e.**, or the expiration of “Special Funding” if applicable, whichever is sooner. The State’s obligation to pay Agreement Funds exclusive of Special Funding will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

**B. Initial Term and Extension**

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on August 07, 2033 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement. Upon request of Local Agency, the State may, in its sole discretion, extend the term of this Agreement by Option Letter pursuant **§7.E.iv**. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in **Exhibit C**.

**C. Early Termination in the Public Interest**

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, and this ARPA Award is not appropriated, or otherwise become unavailable to fund this ARPA Award the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

**i. Method and Content**

The State shall notify Local Agency by providing written notice to Local Agency of the termination and be in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

**ii. Obligations and Rights**

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

**iii. Payments**

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder. This subsection shall not apply to a termination of this ARPA Award by the State for breach by Local Agency.

**D. Local Agency Termination Under Federal Requirements**

Local Agency may request termination of the ARPA Award by sending notice to the State, which includes the effective date of the termination. If this ARPA Award is terminated in this manner, then Local Agency shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

**3. AUTHORITY**

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

Pursuant to Title VI of the Social Security Act, Section 602 of the “Coronavirus State and Local Fiscal Recovery Funds”, a part of the American Rescue Plan, provides state, local and Tribal governments with the resources needed to respond to the pandemic and its economic effects and to build a stronger, more equitable economy during the recovery.

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

**4. PURPOSE**

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT’s Stewardship Agreement with the FHWA and/or USDT as shown in **Exhibit C**.

**5. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

- A. “**Agreement**” means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. “**Agreement Funds**” means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. “**ARPA**” means American Rescue Plan Act, funded by the US Department of the Treasury (“USDT”). See “SLFRF” below.
- D. “**Award**” means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- E. “**Budget**” means the budget for the Work described in **Exhibit C**.
- F. “**Business Day**” means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S..
- G. “**Chief Procurement Officer**” means the individual to whom the Executive Director has delegated his or her authority pursuant to §24-102-202 to procure or supervise the procurement of all supplies and services needed by the State.
- H. “**CJI**” means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302, C.R.S.
- I. “**Consultant**” means a professional engineer or designer hired by Local Agency to design the Work Product.
- J. “**Contractor**” means the general construction contractor hired by Local Agency to construct the Work.

- K. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- L. **“Effective Date”** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- M. **“Evaluation”** means the process of examining Local Agency’s Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- N. **“Exhibits”** means the following exhibits attached to this Agreement:
- i. **Exhibit A**, Scope of Work.
  - ii. **Exhibit B**, Sample Option Letter.
  - iii. **Exhibit C**, Funding Provisions
  - iv. **Exhibit D**, Local Agency Resolution
  - v. **Exhibit E**, Local Agency Contract Administration Checklist
  - vi. **Exhibit F**, Certification for Federal-Aid Contracts
  - vii. **Exhibit G**, Disadvantaged Business Enterprise
  - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
  - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
  - x. **Exhibit J**, Additional Federal Requirements
  - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
  - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
  - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”)
  - xiv. **Exhibit N**, Federal Treasury Provisions
  - xv. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds
  - xvi. **Exhibit P**, SLFRF Subrecipient Quarterly Report
  - xvii. **Exhibit Q**, SLFRF Reporting Modification Form
  - xviii. **Exhibit R**, Applicable Federal Awards
  - xix. **Exhibit S**, PII Certification
  - xx. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source
- O. **“Expiration Date”** means the date on which this Agreement expires, as shown on the Signature and Cover Page for this Agreement.
- P. **“Extension Term”** means the period of time by which the ARPA Expiration Date is extended by the State through delivery of an updated ARPA Letter.
- Q. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- R. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. The US Department of the Treasury is the Federal Awarding Agency for the Federal Award, which may be the subject of this Agreement.
- S. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- T. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.



- U. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- V. **“Initial Term”** means the time period defined in **§2.B**.
- W. **“Local Funds”** means the funds provided by the Local Agency as their obligated contribution to the federal and/or State Awards to receive the federal and/or State funding.
- X. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- Y. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- Z. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- AA. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- BB. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- CC. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- DD. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, et. seq., C.R.S.
- EE. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- FF. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement and shall include any services to be rendered by Local Agency in connection with the Goods.
- GG. **“SLFRF”** means State and Local Fiscal Recovery Funds, provided by ARPA, funded by the US Treasury Department.
- HH. **“Special Funding”** means an award by Federal agency or the State which may include but is not limited to one or a combination of Multimodal Transportation & Mitigation Options Funding, Revitalizing Main Streets, Safer Main Streets, Stimulus Funds, Coronavirus Response and Relief Supplemental Funds, ARPA, SLFRF, or COVID Relief.
- II. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- JJ. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- KK. **“State Fiscal Year”** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- LL. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.

- MM. “**State Records**” means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- NN. “**Sub-Award**” means this Award by the State to Local Agency funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- OO. “**Subcontractor**” means third parties, if any, engaged by Local Agency to aid in performance of the Work.
- PP. “**Subrecipient**” means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- QQ. “**Tax Information**” means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes but is not limited to all information defined as Federal tax Information in Internal Revenue Service Publication 1075.
- RR. “**Uniform Guidance**” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- SS. “**USDT**” The United States Department of the Treasury (**USDT**) is the national treasury and finance department of the federal government of the United States where it serves as an executive department. The USDT funds ARPA.
- TT. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.
- UU. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

## 6. SCOPE OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement. Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the Agreement Expiration Date and/or to extend the period of performance for a phase of Work authorized under this Agreement. To exercise these options to extend the Agreement Expiration Date and/or to update the phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of the Agreement Expiration Date and/or the phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

### A. Local Agency Commitments

#### i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
  - b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
  - c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
  - d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
  - e. Stamp the Plans as produced by a Colorado registered professional engineer.
  - f. Provide final assembly of Plans and all other necessary documents.
  - g. Ensure the Plans are accurate and complete.
  - h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.
- ii. Local Agency Work
- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
  - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
  - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
    - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
    - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
    - 3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
    - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
    - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
    - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
      - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this

reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

### iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
  - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual ([https://www.codot.gov/business/designsupport/bulletins\\_manuals/2006-local-agency-manual](https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual)).
  - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
    - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
    - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within three (3) working days after they are publicly opened.
    - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
    - (d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

- (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

- a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
- b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
- d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:
  - 1) Right of way acquisition (3111) for federal participation and non-participation;
  - 2) Relocation activities, if applicable (3109);
  - 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in §7.F.vi.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part with Federal or State special funding there may be an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. To receive payment or credit for the match, Work must be completed or substantially completed, as outlined in the terms of the grant, prior to the expiration date of the special funding and invoiced in compliance with the rules outlined in the award of the funding. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

- a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.
- b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C**.

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

vi. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Local Agency Funds

Local Agency shall provide their obligated contribution funds as outlined in **§7.A.** and **Exhibit C**. Local Agency shall have raised the full amount of their funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D** if applicable. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of

Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and §7. However, any costs incurred by Local Agency prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Local Agency for costs or expenses incurred or performance by the Local Agency prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the Local Agency. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. **This is NOT a Notice to Proceed.** Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement. This applies to the entire Scope of Work.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also change the funding sources so long as the amount budgeted remains the same and the Local Agency contribution does not increase. The State may also issue a unilateral Option Letter to increase and/or decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a



fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Extend Agreement/Phase Term and/or modify the OMB Uniform Guidance. The State, at its discretion, shall have the option to extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.). In order to exercise this option, the State shall provide written notice to the Local Agency in a form substantially equivalent to **Exhibit B**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance

Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency’s risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency’s non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient’s previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient’s operations, in which failure could impact the Subrecipient’s ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient’s financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient’s non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency’s completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency’s performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. If SLFRF Funds are used the Local Agency shall close out that portion of the Award within 45 days after the ARPA Award Expiration Date. Close out requires Local Agency’s submission to the State of all deliverables defined in this Agreement, and Local Agency’s final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA or US Treasury has not closed this Federal Award within one (1) year and 90 days after the Final Phase Performance End Date due to Local Agency’s failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

**8. REPORTING - NOTIFICATION**

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than ten (10) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State. If SLFRF Funds are used the report must be in the format of **Exhibit P**.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

**9. LOCAL AGENCY RECORDS**

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") pursuant to the requirements of the funding source and for a minimum of three (3) years following the date of submission to the State of the final expenditure report, whichever is longer, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

B. Inspection

Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. Local Agency shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Local Agency. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work. If Local Agency enters into a subcontract with an entity that would also be considered a Subrecipient, then the subcontract entered into by Local Agency shall contain provisions permitting both Local Agency and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted

by Local Agency or a third party. Additionally, if Local Agency is required to perform a single audit under 2 CFR 200.501, *et seq.*, then Local Agency shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

## 10. CONFIDENTIAL INFORMATION-STATE RECORDS

### A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative. If Local Agency or any of its Subcontractors will or may receive the following types of data, Local Agency or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Award as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Award, if applicable. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

### B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

### C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

### D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns, or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing, and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding Personally Identifying Information “PII”

If Local Agency or any of its Subcontracts will or may receive PII under this agreement, Local Agency shall provide for the security for such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Local Agency shall be a “Third Party Service Provider” as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Contractor, including, but not limited to, Contractor’s employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as **Exhibit S** on an annual basis Contractor’s duty and obligation to certify as set forth in **Exhibit S** shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

## 11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor’s employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees, and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State’s interests. Absent the State’s prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency’s obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State’s consideration. Failure to promptly submit a disclosure statement or to follow the State’s direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

## 12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the “GIA”) and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;
- c. \$1,000,000 products and completed operations aggregate; and
- d. \$50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$2,000,000 general aggregate.

v. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

- a. \$1,000,000 each occurrence; and
- b. \$1,000,000 general aggregate.

vii. Cyber/Network Security and Privacy Liability

Liability insurance covering all civil, regulatory and statutory damages, contractual damages, data breach management exposure, and any loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of breach, violation or infringement of right to privacy rights through improper use or disclosure of protect consumer data protection law, confidentiality or other legal protection for personal information, as well as State Confidential Information with minimum limits as follows:

- a. \$1,000,000 each occurrence; and

- b. \$2,000,000 general aggregate.
- C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.
- D. Primacy of Coverage

Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.
- E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.
- F. Subrogation Waiver

All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within seven (7) Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within seven (7) Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

### 13. BREACH

- A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.
- B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

### 14. REMEDIES

- A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§13.B**, shall have all of the remedies listed in this **§14.A**. in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not canceled by the termination notice and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.C**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.



d. Removal

Demand immediate removal from the Work of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with non infringing Work or modify the Work so that it becomes non infringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

**15. DISPUTE RESOLUTION**

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

C. Questions of Fact

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

**16. NOTICES AND REPRESENTATIVES**

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party's principal representative at the address set forth below

or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

**For the State**

Colorado Department of Transportation (CDOT)
Cristobal Abbud, R-1 Local Agency Coordinator
CDOT - R1
2829 W Howard Pl
Denver, CO 80204
303-757-9002
Cristobal.Abbudgarcia@state.co.us

**For the Local Agency**

CITY OF AURORA
Mansour (Mike) Mohseni, Project Engineer
15151 E ALAMEDA PARKWAY STE 3200
AURORA, CO 80012
303-739-7687
mmohseni@auroragov.org

**17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

**A. Work Product**

Local Agency hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Local Agency or any Subcontractors. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

**i. Copyrights**

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

**ii. Patents**

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

iii. Assignments and Assistance

Whether or not the Local Agency is under Agreement with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire. Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Local Agency

Local Agency retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Local Agency including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Local Agency under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Local Agency Property"). Local Agency Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

## 18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. The following applies through June 30, 2022: no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

## 19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, §24-106-107 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

## 20. GENERAL PROVISIONS

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in §20.A, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

I. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

J. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

K. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

L. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. The provisions of the other sections of the main body of this Agreement.
- ii. **Exhibit N**, Federal Treasury Provisions.
- iii. **Exhibit F**, Certification for Federal-Aid Contracts.
- iv. **Exhibit G**, Disadvantaged Business Enterprise.
- v. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts.
- vi. **Exhibit J**, Additional Federal Requirements.
- vii. **Exhibit K**, Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions.
- viii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form.
- ix. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the “Uniform Guidance”).
- x. **Exhibit O**, Agreement with Subrecipient of Federal Recovery Funds.
- xi. **Exhibit R**. Applicable Federal Awards.
- xii. Colorado Special Provisions in the main body of this Agreement.
- xiii. **Exhibit A**, Scope of Work.
- xiv. **Exhibit H**, Local Agency Procedures for Consultant Services.
- xv. **Exhibit B**, Sample Option Letter.
- xvi. **Exhibit C**, Funding Provisions.
- xvii. **Exhibit P**, SLFRF Subrecipient Quarterly Report.
- xviii. **Exhibit Q**, SLFRF Reporting Modification Form.
- xix. **Exhibit D**, Local Agency Resolution.
- xx. **Exhibit E**, Local Agency Contract Administration Checklist.
- xxi. **Exhibit S**, PII Certification.
- xxii. **Exhibit T**, Checklist of Required Exhibits Dependent on Funding Source.
- xxiii. Other exhibits in descending order of their attachment.

M. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

N. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

O. Third Party Beneficiaries

Except for the Parties’ respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

P. Waiver

A Party’s failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107 C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

S. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

T. Compliance with State and Federal Law, Regulations, and Executive Orders

Local Agency shall comply with all State and Federal law, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the term of this Agreement.

U. Accessibility

i. Local Agency shall comply with and the Work Product provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by the Governor's Office of Information Technology (OIT), pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.

ii. Each Party agrees to be responsible for its own liability incurred as a result of its participation in and performance under this Agreement. In the event any claim is litigated, each Party will be responsible for its own attorneys' fees, expenses of litigation, or other costs. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to either the Local Agency or the State by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. and Article XI of the Colorado Constitution. Nothing in the Agreement shall be construed as a waiver of any provision of the State Fiscal Rules.

iii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

V. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the state imposes such taxes on Local Agency. Local Agency shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Local Agency may wish to have in place in connection with this Agreement.

**21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)**

These Special Provisions apply to all contracts. Contractor refers to Local Agency.

**A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

**E. COMPLIANCE WITH LAW.**

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

## **22. FEDERAL REQUIREMENTS**

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F, Exhibit I, Exhibit J, Exhibit K, Exhibit M, Exhibit N** and **Exhibit O** are hereby incorporated by this reference.

## **23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

Local Agency will comply with all requirements of **Exhibit G** and **Exhibit E**, Local Agency Contract Administration Checklist, regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.



**EXHIBIT A**  
**SCOPE OF WORK**

Name of Project: LAREDO ST BRIDGE REPLACEMENT  
Project Number: BRO M055-064  
SubAccount #: 25847

This project scope is to replace existing Laredo Street bridge structure over Highline Canal (AUR04.6-K.0) with a new structure. The work involves design and construction of the new bridge. The Laredo Street Over High Line Canal bridge is located approximately 900 feet north of Colorado State Highway 40 (Colfax) on Laredo Street within the City of Aurora, Colorado. This street serves as the main and most prevalent access route for the residential properties to the City's roadway network. The structure had an ADT of 5975 in 2021, a three-fold increase from 1732 in 2017. Based on the existing condition of the current bridge and substandard safety components, replacement of the current structure and implementing latest safety standards is the most cost-effective solution.

**If ARPA funds are used, all ARPA funds must be encumbered by December 31, 2024. All work funded by ARPA must be completed by December 31, 2026 and all bills must be submitted to CDOT for payment by January 31, 2027. These bills must be paid by CDOT by March 31, 2027.**

By accepting funds for this Scope of Work, Local Agency acknowledges, understands, and accepts the continuing responsibility for the safety of the traveling public after initial acceptance of the project. **Local Agency is responsible for maintaining and operating the scope of work described in this Exhibit A constructed under this Agreement at its own cost and expense during its useful life.**

**THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK**

**EXHIBIT B**

**SAMPLE IGA OPTION LETTER**

<b>Date</b>	<b>State Fiscal Year</b>	<b>Option Letter No.</b>
<b>Project Code</b>	<b>Original Agreement #</b>	

Vendor Name:

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify OMB Guidance.

**Option A**

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

**Option B**

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

**Option C**

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and

original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

**Option D**

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the term of this Agreement and/or update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. This is made part of the original Agreement and replaces the Expiration Date shown on the Signature and Cover Page. Any updated version of **Exhibit C** shall be attached to any executed Option Letter as **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

The effective date of this option letter is upon approval of the State Controller or delegate.

**STATE OF COLORADO**  
**Jared S. Polis**  
**Department of Transportation**

By: \_\_\_\_\_  
Keith Stefanik, P.E., Chief Engineer  
(For) Shoshana M. Lew, Executive Director

Date: \_\_\_\_\_

**ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.**

**STATE OF COLORADO**  
**STATE CONTROLLER**  
Robert Jaros, CPA, MBA, JD

By: \_\_\_\_\_  
Colorado Department of Transportation

Date: \_\_\_\_\_

**EXHIBIT C - FUNDING PROVISIONS****City of Aurora - BRO M055-064 (25847)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost of the Work to be \$2,223,700.00, which is to be funded as follows:

<b>1. FUNDING</b>		
a.	Federal Funds (80% of BRO Award)	\$1,778,960.00
b.	Local Agency Funds (20% of BRO Award)	\$444,740.00
<b>TOTAL FUNDS ALL SOURCES</b>		<b>\$2,223,700.00</b>
<b>2. OMB UNIFORM GUIDANCE</b>		
a.	Federal Award Identification Number (FAIN):	TBD
b.	Name of Federal Awarding Agency:	FHWA
c.	Local Agency Unique Entity Identifier	KVZATDBDECG8
d.	Assistance Listing # Highway Planning and Construction	ALN 20.205
e.	Is the Award for R&D?	No
f.	Indirect Cost Rate (if applicable)	N/A
g.	Amount of Federal Funds Obligated by this Action:	\$0.00
h.	Amount of Federal Funds Obligated to Date (including this Action):	\$0.00
<b>3. ESTIMATED PAYMENT TO LOCAL AGENCY</b>		
a.	Federal Funds Budgeted	\$1,778,960.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	\$0.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>		<b>80% \$1,778,960.00</b>
<b>TOTAL ESTIMATED FUNDING BY LOCAL AGENCY</b>		<b>20% \$444,740.00</b>
<b>TOTAL PROJECT ESTIMATED FUNDING</b>		<b>100% \$2,223,700.00</b>
<b>4. FOR CDOT ENCUMBRANCE PURPOSES</b>		
<b>BRO M055-064 (25847)</b>		
a.	Total Encumbrance Amount (Federal + Local Agency Funds)	\$2,223,700.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	\$0.00
<b>NET TO BE ENCUMBERED BY CDOT IS AS FOLLOWS</b>		<b>\$2,223,700.00</b>

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 25847.10.30	Performance Period Start*/End Date MM/DD/YYYY- MM/DD/YYYY	Design 3020	\$0.00
WBS Element 25847.20.10	Performance Period Start*/End Date MM/DD/YYYY- MM/DD/YYYY	Const. 3301	\$0.00

\*The Local Agency should not begin work until all three (3) of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three (3) milestones are achieved will not be reimbursable.

**B. Funding Ratios**

The funding ratio for the federal funds for this Work is 80% federal to 20% Local Agency funds, and this

ratio applies only to the \$2,223,700.00 that is eligible for federal funding. All other costs are borne by the Local Agency at 100%. If the total cost of performance of the Work exceeds \$2,223,700.00, and additional federal funds are not available, the Local Agency shall pay all such excess costs. If the total cost of performance of the Work is less than \$2,223,700.00, then the amounts of Local Agency and federal funds will be decreased in accordance with the funding ratio described in **A1. This applies to the entire scope of Work.**

### **C. Maximum Amount Payable**

The maximum amount payable to the Local Agency under this Agreement shall be \$1,778,960.00. For CDOT accounting purposes, the federal funds of \$1,778,960.00, and the Local Agency funds of \$444,740.00 will be encumbered for a total encumbrance of \$2,223,700.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total budget of this project is \$2,223,700.00, unless this amount is increased by an executed amendment before any increased cost is incurred. The total cost of the Work is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and any cost is subject to revisions agreed to by the parties prior to bid and award. The maximum amount payable will be reduced without amendment when the actual amount of the Local Agency's awarded Agreement is less than the budgeted total of the federal funds and the Local Agency funds. The maximum amount payable will be reduced through the execution of an Option Letter as described in Section 7. E. of this contract. **This applies to the entire scope of Work.**

### **D. Single Audit Act Amendment**

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

#### **i. Expenditure less than \$750,000**

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

#### **ii. Expenditure of \$750,000 or more-Highway Funds Only**

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

#### **iii. Expenditure of \$750,000 or more-Multiple Funding Sources**

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

#### **iv. Independent CPA**

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

**EXHIBIT D**

**LOCAL AGENCY RESOLUTION (IF APPLICABLE)**

## Exhibit E-

### Local Agency Contract Administration Checklist

COLORADO DEPARTMENT OF TRANSPORTATION <b>LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST</b>			
<b>Project No.</b> BRO M055-064	<b>STIP No.</b> SR17001	<b>Project Code</b> 25847	<b>Region</b> R-1
<b>Project Location</b> 900 feet north of Colorado State Highway 40 (Colfax) on Laredo Street			<b>Date</b> 7/27/2023
<b>Project Description</b> Replace the currently structurally deficient Laredo Street bridge.			
<b>Local Agency</b> City of Aurora		<b>Local Agency Project Manager</b> Mansour (Mike) Mohseni	
<b>CDOT Resident Engineer</b> Maria Hajiaghvae		<b>CDOT Project Manager</b> Cristobal Abbud	
<b>INSTRUCTIONS:</b> This checklist shall be used to establish the contractual administrative responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency Agreement. Section numbers (NO.) correspond to the applicable chapters of the <i>CDOT Local Agency Desk Reference (Local Agency Manual)</i> . LAWR numbers correspond to the applicable flowchart in the Local Agency Web Resource.  The checklist shall be prepared by placing an X under the responsible party, opposite each of the tasks. The X denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, # will denote that CDOT must concur or approve.  Tasks that will be performed by Headquarters staff are indicated with an X in the CDOT column under Responsible Party. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.  The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.  Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
<b>TIP / STIP AND LONG-RANGE PLANS</b>				
	2.1	Review Project to ensure it is consistent with Statewide Plan and amendments thereto		X
<b>FEDERAL FUNDING OBLIGATION AND AUTHORIZATION</b>				
	4.1	Authorize funding by phases (Requires FHWA concurrence/involvement if Federal-aid Highway funded project.). <i>Please write in "NA", if Not Applicable.</i>		X
<b>PROJECT DEVELOPMENT</b>				
1	5.1	Prepare Design Data - CDOT Form 463	X	
	5.2	Determine Delivery Method	X	
	5.3	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
2	5.4	Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> <li>• Project Development</li> <li>• Construction Contract Administration (including Fabrication Inspection Services)</li> </ul>	X	#
3,3A	5.5	Conduct Design Scoping Review Meeting	X	X
3,6	5.6	Conduct Public Involvement	X	

**Exhibit E-**  
**Local Agency Contract Administration Checklist**

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
3	5.7	Conduct Field Inspection Review (FIR)	X	#
4	5.8	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5	5.9	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	
3	5.10	Obtain Utility and Railroad Agreements	X	#
3	5.11	Conduct Final Office Review (FOR)	X	#
3A	5.12	Justify Force Account Work by the Local Agency	X	#
3B	5.13	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
3	5.14	Document Design Exceptions - CDOT Form 464	X	#
	5.15	Seek Approval of Guaranty and Warranty Clauses	X	#
	5.16	Justify Colorado Residency Labor Preference	X	#
	5.17	Seek Approval of Specifications on Local Agency Projects	X	#
3	5.18	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
	5.19	Comply with Requirements for Off-and On-System Bridges & Other Structural Work	X	#
	5.20	Update Approvals on PS&E Package if Project Schedule Delayed	X	#
	5.21	Ensure Authorization of Funds for Construction		X
	5.22	Use Electronic Signatures	X	
	5.23	File Project Records/Documentation in ProjectWise		X
<b>PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE</b>				
3	6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
	6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.)  Maria Hajiaghaee <span style="float: right;">7/27/2023</span> _____ CDOT Resident Engineer <span style="float: right;">Date</span>		X
	6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist) "NA", if Not Applicable		X
	6.4	Enforce Prompt Payment Requirements		X
	6.5	Use Electronic Tracking and Submission Systems – B2Gnow <input checked="" type="checkbox"/> LCPtracker <input checked="" type="checkbox"/>		
3	6.6	Prepare/submit Title VI Plan and Incorporate Title VI Assurances	X	
6,7		Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)	X	#
<b>ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS</b>				
Federal Project (use 7.1 series in Chapter 7) <input checked="" type="checkbox"/> Non-Federal Project (Use 7.2 series in Chapter 7) <input type="checkbox"/>				
6,7		Obtain Approval for Advertisement Period of Less Than Three Weeks;	X	#
7		Advertise for Bids	X	#
7		Concurrence to Advertise		X
7		Distribute "Advertisement Set" of Plans and Specifications	X	
7		Review Worksite & Plan Details w/ Prospective Bidders While Project Is Under Ad	X	
7		Open Bids	X	
7		Process Bids for Compliance		
		Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals. (Please write in "NA", if Not Applicable)		X
		Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals. "NA", if Not Applicable.		X
		Submit required documentation for CDOT award concurrence	X	



**Exhibit E-**  
**Local Agency Contract Administration Checklist**

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
		Concurrence from CDOT to Award		X
		Approve Rejection of Low Bidder		X
7,8		Award Contract (federal)	X	#
8		Provide "Award" and "Record" Sets of Plans and Specifications (federal)	X	#
<b>CONSTRUCTION MANAGEMENT</b>				
8	8.1	Issue Notice to Proceed to the Contractor	X	#
8	8.2	Project Safety	X	
		Pre-construction Conference (Appendix B) • Fabrication Inspection Notifications	X	
		Pre-survey • Construction staking • Monumentation	X X	
		Partnering (Optional)	N/A	N/A
		Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i> )	X	
		Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )	X	
		HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i> )	X	
8	8.4	Develop and distribute Public Notice of Planned Construction to media and local residents		
9	8.5	Supervise Construction		
		A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Mansour (Mike) Mohseni _____ 303.739.7687 Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
		Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
		Construction inspection and documentation (including projects with structures)	X	
		Fabrication Inspection and documentation	X	
9	8.6	Review and Approve Shop Drawings	X	#
9	8.7	Perform Traffic Control Inspections	X	
9	8.8	Perform Construction Surveying	X	
9	8.9	Monument Right-of-Way	X	
9,9A	8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent)  Provide the name and phone number of the person authorized for this task. Mansour (Mike) Mohseni _____ 303.739.7687 Local Agency Representative Phone number	X	#
9	8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	#
9B	8.12	Prepare and Authorize Change Orders	X	X
9B	8.13	Submit Change Order Package to CDOT	X	
9A	8.14	Prepare Local Agency Reimbursement Requests	X	
9	8.15	Monitor Project Financial Status	X	#
9	8.16	Prepare and Submit Monthly Progress Reports	X	#
9	8.17	Resolve Contractor Claims and Disputes	X	#
	8.18	Conduct Routine and Random Project Reviews  Provide the name and phone number of the person responsible for this task. Maria Hajiaghae _____ 720-277-6502 CDOT Resident Engineer Phone number		X
9	8.19	Ongoing Oversight of DBE Participation	X	

**Exhibit E-  
Local Agency Contract Administration Checklist**

LA WR	NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
			LA	CDOT
<b>MATERIALS</b>				
9,9C	9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	X
			X	#
9,9C	9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed		X
			X	
			X	
9C	9.3	Perform Project Acceptance Samples and Tests	X	
9C	9.4	Perform Laboratory Verification Tests	X	
9C	9.6	Accept Manufactured Products  Inspection of structural components: <b>On-system requires CDOT Approval</b> • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices		
			X	#
			X	#
			X	#
9C	9.6	Approve Sources of Materials: <b>On-system requires CDOT Approval</b>	X	#
9C	9.7	Independent Assurance Testing (IAT) <b>On-system requires CDOT Approval</b>  Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT		X
			X	
			X	
9C	9.8	Approve mix designs <b>On-system requires CDOT Approval</b> • Concrete • Hot mix asphalt	X	#
			X	#
9C	9.9	Check Final Materials Documentation	X	
9C	9.10	Complete and Distribute Final Materials Documentation	X	
<b>CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE</b>				
9	10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
8,9	10.2	Process CDOT Form 205 - Sublet Permit Application and CDOT Form 1425 – Supplier Application Approval Request. Review & sign completed forms, as applicable, and submit to EEO/Civil Rights Specialist.	X	X
9	10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
9	10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
9	10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire	X	
9	10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	
9	10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
	10.8	Contract Compliance and Project Site Reviews		X
<b>FINALS</b>				
	11.1	Conduct Final Project Inspection.	X	X
10	11.2	Write Final Project Acceptance Letter	X	
10	11.3	Advertise for Final Settlement	X	
11	11.4	Prepare and Distribute Final As-Constructed Plans	X	
11	11.5	Prepare EEO Certification and Collect EEO Forms	X	

**Exhibit E-**  
**Local Agency Contract Administration Checklist**

11	11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
<b>LA WK</b>	<b>NO.</b>	<b>DESCRIPTION OF TASK</b>	<b>RESPONSIBLE PARTY</b>	
			<b>LA</b>	<b>CDOT</b>
11	11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	X
	11.8	Review CDOT Form 1419		X
	11.9	Submit CDOT Professional Services Closeout Report Form		
	11.10	Complete and Submit CDOT Form 1212 LA – Final Acceptance Report (by CDOT)	X	X
11	11.11	Process Final Payment	X	
	11.12	Close out Local Project	X	X
	11.13	Complete and Submit CDOT Form 950 - Project Closure		X
11	11.14	Retain Project Records	X	
11	11.15	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager  
 CDOT Region Program Engineer  
 CDOT Region EEO/Civil Rights Specialist

CDOT Region Materials Engineer  
 CDOT Contracts and Market Analysis Branch  
 Local Agency Project Manager

**EXHIBIT F**  
**CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

## **EXHIBIT G**

### **DISADVANTAGED BUSINESS ENTERPRISE**

#### SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

#### SECTION 2. DBE Obligation.

The recipient or the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

#### SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency

upon request: Business Programs Office

Colorado Department of Transportation

2829 West Howard Place Denver,

Colorado 80204

Phone: (303) 757-9007

REQUIRED BY 49 CFR  
PART 26

## EXHIBIT H

### LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

## EXHIBIT I

### FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

#### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

#### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

#### II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.



**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

#### **8. Reasonable Accommodation for Applicants /**

**Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

#### **9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:**

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurances Required:**

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees (29 CFR 5.5)

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### **10. Certification of eligibility (29 CFR 5.5)**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### **V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

\* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

### **3. Withholding for unpaid wages and liquidated damages.**

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on longstanding interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

## **VII. SAFETY: ACCIDENT PREVENTION**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

#### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant



who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

## **3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

## **XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**EXHIBIT J**  
**ADDITIONAL FEDERAL REQUIREMENTS**

Federal laws and regulations that may be applicable to the Work include:

**Executive Order 11246**

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

**Copeland "Anti-Kickback" Act**

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

**Davis-Bacon Act**

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

**Contract Work Hours and Safety Standards Act**

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

**Clean Air Act**

Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts more than \$100,000).

**Energy Policy and Conservation Act**

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

**OMB Circulars**

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

**Hatch Act**

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally assisted programs.

**Nondiscrimination**

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land, or other aid. The Local Agency shall also include the following in all contract advertisements:

*The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.*

**ADA**

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

**Uniform Relocation Assistance and Real Property Acquisition Policies Act**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

**Drug-Free Workplace Act**

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

**Age Discrimination Act of 1975**

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

**23 C.F.R. Part 172**

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

**23 C.F.R Part 633**

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

**23 C.F.R. Part 635**

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

**Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973**

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

**Nondiscrimination Provisions:**

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees, and successors in interest, agree as follows:

**i. Compliance with Regulations**

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

**ii. Nondiscrimination**

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

**iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

**iv. Information and Reports**

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

**v. Sanctions for Noncompliance**

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

**Incorporation of Provisions §22**

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

**The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination**

**Assurances for Local Agencies**

**DOT Order No. 1050.2A**

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

**Statutory/Regulatory Authorities**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

**General Assurances**

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

**Specific Assurances**

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated or will be (with regard to a "facility") operated or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests for Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity



4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

\_\_\_\_\_  
*(Name of Recipient)*

by \_\_\_\_\_  
*(Signature of Authorized Official)*

DATED \_\_\_\_\_

## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## APPENDIX B

### CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [,] and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX C

### CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. \*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. \*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX D

### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. \*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. \*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

## EXHIBIT K

### FFATA SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado  
Supplemental Provisions for  
Federally Funded Contracts, Grants, and Purchase Orders  
Subject to  
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended  
Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

**1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

**1.1. “Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

**1.1.1.** Grants;

**1.1.2.** Contracts;

**1.1.3.** Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

**1.1.4.** Loans;

**1.1.5.** Loan Guarantees;

**1.1.6.** Subsidies;

**1.1.7.** Insurance;

**1.1.8.** Food commodities;

**1.1.9.** Direct appropriations;

**1.1.10.** Assessed and voluntary contributions; and

**1.1.11.** Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

**1.1.12.** Technical assistance, which provides services in lieu of money;

**1.1.13.** A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

**1.1.14.** Any award classified for security purposes; or

**1.1.15.** Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

**1.2. “Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

**1.3. “Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

**1.4. “Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

**1.5. “Entity”** means all of the following as defined at 2 CFR part 25, subpartC;

**1.5.1.** A governmental organization, which is a State, local government, or Indian Tribe;

**1.5.2.** A foreign public entity;

**1.5.3.** A domestic or foreign non-profit organization;



- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
  - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
  - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
  - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
  - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
  - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
  - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
  - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
  - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
  - 4.2. In the preceding fiscal year, Contractor received:
    - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
    - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
  - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

**7.1 To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

**7.1.1** Subrecipient DUNS Number;

**7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

**7.1.3** Subrecipient Parent DUNS Number;

**7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

**7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

**7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

**7.2 To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

**7.2.1** Subrecipient's DUNS Number as registered in SAM.

**7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

## **8. Exemptions.**

**8.1.** These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

**8.2** A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.


**8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

**8.4** There are no Transparency Act reporting requirements for Vendors.

**Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

## EXHIBIT L

### SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

 <b>CDOT SUBRECIPIENT RISK ASSESSMENT</b>		Date: _____		
Name of Entity (Subrecipient):		_____		
Name of Project / Program:		_____		
Estimated Award Period:		_____		
Entity Executive Director or VP:		_____		
Entity Chief Financial Officer:		_____		
Entity Representative for this Self Assessment:		_____		
<b>Instructions: (See "Instructions" tab for more information)</b> 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No	N/A
<b>EXPERIENCE ASSESSMENT</b>		Yes	No	N/A
1 Is your entity new to operating or managing federal funds (has not done so within the past three years)?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Does your staff assigned to the program have at least three full years of experience with this federal program?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>MONITORING/AUDIT ASSESSMENT</b>		Yes	No	N/A
4 Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 a) Were there non-compliance issues in this prior review?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) What were the number and extent of issues in prior review?		<input type="checkbox"/> <small>1 to 2</small>	<input type="checkbox"/> <small>&gt;3</small>	<input type="checkbox"/>
<b>OPERATION ASSESSMENT</b>		Yes	No	N/A
6 Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>FINANCIAL ASSESSMENT</b>		Yes	No	N/A
7 a) Does your entity have an indirect cost rate that is approved and current?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) If Yes, who approved the rate, and what date was it approved?		_____		
8 Is this grant/award 10% or more of your entity's overall funding?		<input type="checkbox"/> <small>&gt;10%</small>	<input type="checkbox"/> <small>&lt;10%</small>	<input type="checkbox"/>
9 Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10 Has your entity had difficulty meeting local match requirements in the last three years?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11 What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?		_____		

INTERNAL CONTROLS ASSESSMENT				Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	<input type="checkbox"/>	<input type="checkbox"/>			
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	<input type="checkbox"/>	<input type="checkbox"/>			
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	<input type="checkbox"/>	<input type="checkbox"/>			
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
17	How many total FTE perform accounting functions within your organization?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		≥ 6	2 to 5	< 2		
IMPACT ASSESSMENT				Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<input type="checkbox"/>	<input type="checkbox"/>			
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: <b>YES</b> = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. <b>NO</b> = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. <b>N/A</b> = Check if have no violations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
PROGRAM MANAGEMENT ASSESSMENT				Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project ( <i>Buy America requirements</i> )? <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Comments</b> - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.</p>			
<p><input type="checkbox"/> By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.</p>			



Tool Version:  
v2.0 (081816)

## EXHIBIT M

### OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

**Subject to  
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and  
Audit Requirements for Federal Awards (“Uniform Guidance”),  
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

**1. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

- 1.1. **“Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
- 1.2. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- 1.3. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
- 1.4. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 1.5. **“Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
- 1.6. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- 1.7. **“Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
- 1.8. **“State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
- 1.9. **“Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
- 1.10. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

- 1.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 2. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. Procurement Standards.**
- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation,  
§§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient’s fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
- 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government



Accountability Office.

**5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

**6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

**6.1 Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments

under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled,

terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

**6.2 Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40

U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**6.3 Rights to Inventions Made Under a Contract or Agreement.** If the Federal Award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**6.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection

Agency (EPA).

**6.5 Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAMExclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**6.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**7. Certifications.** Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

**7.1 Event of Default.** Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

**8. Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

**9. Performance Measurement.** The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

**Exhibit N**  
**Federal Treasury Provisions**

**1. APPLICABILITY OF PROVISIONS.**

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury’s Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2<sup>nd</sup> tier subrecipient), must hold the 2<sup>nd</sup> tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

**2. DEFINITIONS.**

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
  - 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
  - 2.1.2. “Entity” means:
    - 2.1.2.1. a Non-Federal Entity;
    - 2.1.2.2. a foreign public entity;
    - 2.1.2.3. a foreign organization;
    - 2.1.2.4. a non-profit organization;
    - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
    - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
    - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
    - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
  - 2.1.3. “Executive” means an officer, managing partner or any other employee in a management position.
  - 2.1.4. “Expenditure Category (EC)” means the category of eligible uses as defined by the US Department of Treasury in “Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at [www.treasury.gov](http://www.treasury.gov).

- 2.1.5. “Federal Awarding Agency” means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.6. “Grant” means the Grant to which these Federal Provisions are attached.
- 2.1.7. “Grantee” means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
- 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
  - 2.1.9.2. Is not organized primarily for profit; and
  - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. “OMB” means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. “Pass-through Entity” means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. “Prime Recipient” means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. “Subaward” means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. “Subrecipient” or “Subgrantee” means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program.
- 2.1.15. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
- 2.1.15.1. Salary and bonus;
  - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the

fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.15.4. Change in present value of defined benefit and actuarial pension plans;

2.1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.

2.1.16. “Transparency Act” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

2.1.17. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.18. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee at <https://sam.gov/content/home>.

### **3. COMPLIANCE.**

3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3.2. Per US Treasury Final Award requirements, grantee programs or services must not include a term or conditions that undermines efforts to stop COVID-19 or discourages compliance with recommendations and CDC guidelines.

### **4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID (UEI) REQUIREMENTS.**

4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.

4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee’s information in Sam.gov at least annually.

### **5. TOTAL COMPENSATION.**

5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

5.1.2. In the preceding fiscal year, Grantee received:

- 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 5.1.2.3. 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

## **6. REPORTING.**

- 6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

## **7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.**

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

## **8. SUBRECIPIENT REPORTING REQUIREMENTS.**

- 8.1. Grantee shall report as set forth below.
  - 8.1.1. Grantee shall use the SLFRF Subrecipient Quarterly Report Workbook as referenced in Exhibit P to report to the State Agency within ten (10) days following each quarter ended September, December, March and June. Additional information on specific requirements are detailed in the SLFRF Subrecipient Quarterly Report Workbooks and "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at [www.treasury.gov](http://www.treasury.gov).

## **EC 1 – Public Health**

### **All Public Health Projects**

- a) Description of structure and objectives
- b) Description of relation to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Capital Expenditures
  - i. Presence of capital expenditure in project
  - ii. Total projected capital expenditure
  - iii. Type of capital expenditure
  - iv. Written justification
  - v. Labor reporting

### **COVID-19 Interventions and Mental Health (1.4, 1.11, 1.12, 1.13)**

- a) Amount of total project used for evidence-based programs
- b) Evaluation plan description

### **COVID-19 Small Business Economic Assistance (1.8)**

- a) Number of small businesses served

### **COVID-19 Assistance to Non-Profits (1.9)**

- a) Number of non-profits served

### **COVID-19 Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (1.10)**

- a) Sector of employer
- b) Purpose of funds

## **EC 2 – Negative Economic Impacts**

### **All Negative Economic Impacts Projects**

- a) Description of project structure and objectives
- b) Description of project's response to COVID-19
- c) Identification of impacted and/or disproportionately impacted communities
- d) Amount of total project used for evidence-based programs and description of evaluation plan (*not required for 2.5, 2.8, 2.21-2.24, 2.27-2.29, 2.31, 2.34-2.36*)
- e) Number of workers enrolled in sectoral job training programs
- f) Number of workers completing sectoral job training programs
- g) Number of people participating in summer youth employment programs
- h) Capital Expenditures
  - i. Presence of capital expenditure in project
  - ii. Total projected capital expenditure
  - iii. Type of capital expenditure
  - iv. Written justification
  - v. Labor reporting

### **Household Assistance (2.1-2.8)**

- a) Number of households served



- b) Number of people or households receiving eviction prevention services (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*
- c) Number of affordable housing units preserved or developed (2.2 & 2.5 only) *(Federal guidance may change this requirement in July 2022)*

**Healthy Childhood Environments (2.11-2.13)**

- a) Number of children served by childcare and early learning *(Federal guidance may change this requirement in July 2022)*
- b) Number of families served by home visiting *(Federal guidance may change this requirement in July 2022)*

**Education Assistance (2.14, 2.24-2.27)**

- a) National Center for Education Statistics (“NCES”) School ID or NCES District ID
- b) Number of students participating in evidence-based programs *(Federal guidance may change this requirement in July 2022)*

**Housing Support (2.15, 2.16, 2.18)**

- a) Number of people or households receiving eviction prevention services *(Federal guidance may change this requirement in July 2022)*
- b) Number of affordable housing units preserved or developed *(Federal guidance may change this requirement in July 2022)*

**Small Business Economic Assistance (2.29-2.33)**

- a) Number of small businesses served

**Assistance to Non-Profits (2.34)**

- a) Number of non-profits served

**Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (2.35-2.36)**

- a) Sector of employer
- b) Purpose of funds
- c) If other than travel, tourism and hospitality (2.36) – description of hardship

**EC 3 – Public Health – Negative Economic Impact: Public Sector Capacity**

**Payroll for Public Health and Safety Employees (EC 3.1)**

- a) Number of government FTEs responding to COVID-19

**Rehiring Public Sector Staff (EC 3.2)**

- a) Number of FTEs rehired by governments

**EC 4 – Premium Pay**

**All Premium Pay Projects**

- a) List of sectors designated as critical by the chief executive of the jurisdiction, if beyond those listed in the final rule
- b) Numbers of workers served
- c) Employer sector for all subawards to third-party employers
- d) Written narrative justification of how premium pay is responsive to essential work during the public health emergency for non-exempt workers or those making over 150 percent of the state/county’s average annual wage

- e) Number of workers to be served with premium pay in K-12 schools

## **EC 5 – Infrastructure Projects**

### **All Infrastructure Projects**

- a) Projected/actual construction start date (month/year)
- b) Projected/actual initiation of operations date (month/year)
- c) Location (for broadband, geospatial data of locations to be served)
- d) Projects over \$10 million
  - i. Prevailing wage certification or detailed project employment and local impact report
  - ii. Project labor agreement certification or project workforce continuity plan
  - iii. Prioritization of local hires
  - iv. Community benefit agreement description, if applicable

### **Water and sewer projects (EC 5.1-5.18)**

- a) National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
- b) Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)
- c) Median Household Income of service area
- d) Lowest Quintile Income of the service area

### **Broadband projects (EC 5.19-5.21)**

- a) Confirm that the project is designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download and upload speeds.
  - i. If the project is not designed to reliably meet or exceed symmetrical 100 Mbps download and upload speeds, explain why not, and
  - ii. Confirm that the project is designed to, upon completion, meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.
- b) Additional programmatic data will be required for broadband projects and will be defined in a subsequent version of the US Treasury Reporting Guidance, including, but not limited to (*Federal guidance may change this requirement in July 2022*):
  - i. Number of households (broken out by households on Tribal lands and those not on Tribal lands) that have gained increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, with the number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download and number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
  - ii. Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) that have projected increased access to broadband meeting the minimum speed standards in areas that previously

lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization, with the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

- iii. Narrative identifying speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering, technology to be deployed, miles of fiber, cost per mile, cost per passing, number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download, number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload, and number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization. Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

### **All Expenditure Categories**

- a) Program income earned and expended to cover eligible project costs

8.1.2. A Subrecipient shall report the following data elements to Prime Recipient no later than five days after the end of the month following the month in which the Subaward was made.

- 8.1.2.1. Subrecipient Unique Entity ID;
- 8.1.2.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
- 8.1.2.3. Subrecipient parent's organization Unique Entity ID;
- 8.1.2.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 8.1.2.5. Subrecipient’s top 5 most highly compensated Executives if the criteria in §4 above are met; and
  - 8.1.2.6. Subrecipient’s Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.
- 8.1.3. To Prime Recipient. A Subrecipient shall report to its Prime Recipient, the following data elements:
- 8.1.3.1. Subrecipient’s Unique Entity ID as registered in SAM.
  - 8.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.
  - 8.1.3.3. Narrative identifying methodology for serving disadvantaged communities. See the "Project Demographic Distribution" section in the "Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at [www.treasury.gov](http://www.treasury.gov). This requirement is applicable to all projects in Expenditure Categories 1 and 2.
  - 8.1.3.4. Narrative identifying funds allocated towards evidenced-based interventions and the evidence base. See the “Use of Evidence” section in the “Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds” report available at [www.treasury.gov](http://www.treasury.gov). See section 8.1.1 for relevant Expenditure Categories.
  - 8.1.3.5. Narrative describing the structure and objectives of the assistance program and in what manner the aid responds to the public health and negative economic impacts of COVID-19. This requirement is applicable to Expenditure Categories 1 and 2. For aid to travel, tourism, and hospitality or other impacted industries (EC 2.11-2.12), also provide the sector of employer, purpose of funds, and if not travel, tourism and hospitality a description of the pandemic impact on the industry.
  - 8.1.3.6. Narrative identifying the sector served and designated as critical to the health and well-being of residents by the chief executive of the jurisdiction and the number of workers expected to be served. For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, other than those where the eligible worker receiving premium pay is earning (with the premium pay included) below 150 percent of their residing state or county’s average annual wage for all occupations, as defined by the Bureau of Labor Statistics Occupational Employment and Wage Statistics, whichever is higher, OR the eligible worker receiving premium pay is not exempt from the Fair Labor Standards Act overtime provisions, include justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19 but should not include personally identifiable information. This requirement applies to EC 4.1, and 4.2.
  - 8.1.3.7. For infrastructure projects (EC 5), or capital expenditures in any expenditure category, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data). For projects over \$10 million:
  - 8.1.3.8. Certification that all laborers and mechanics employed by Contractors and Subcontractors in the performance of such project are paid wages at rates not less

than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing (1) the number of employees of Contractors and sub-contractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Recipients must maintain sufficient records to substantiate this information upon request.

- 8.1.3.8.1. A Subrecipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing: (1) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (2) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (3) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
  - 8.1.3.8.2. Whether the project prioritizes local hires.
  - 8.1.3.8.3. Whether the project has a Community Benefit Agreement, with a description of any such agreement.
- 8.1.4. Subrecipient also agrees to comply with any reporting requirements established by the US Treasury, Governor's Office and Office of the State Controller. The State of Colorado may need additional reporting requirements after this agreement is executed. If there are additional reporting requirements, the State will provide notice of such additional reporting requirements via Exhibit Q – SLFRF Reporting Modification Form.

## **9. PROCUREMENT STANDARDS.**

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **10. ACCESS TO RECORDS.**

- 10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

## **11. SINGLE AUDIT REQUIREMENTS.**

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.

- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

## **12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.**

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
  - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
  - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).

- 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements,” and any implementing regulations issued by the Federal Awarding Agency.
- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing “Never Contract with the Enemy” in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.



- 12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury’s Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury’s Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement or agreement.

### **13. CERTIFICATIONS.**

- 13.1. Subrecipient Certification. Subrecipient shall sign a “State of Colorado Agreement with Recipient of Federal Recovery Funds” Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

### **14. EXEMPTIONS.**

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

### **15. EVENT OF DEFAULT AND TERMINATION.**

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
  - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
  - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

**EXHIBIT O**

**AGREEMENT WITH SUBSUBRECIPIENT OF FEDERAL RECOVERY FUNDS**

Section 602(b) of the Social Security Act (the Act), as added by section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), authorizes the Department of the Treasury (Treasury) to make payments to certain Subrecipients from the Coronavirus State Fiscal Recovery Fund. The State of Colorado has signed and certified a separate agreement with Treasury as a condition of receiving such payments from the Treasury. This agreement is between your organization and the State and your organization is signing and certifying the same terms and conditions included in the State's separate agreement with Treasury. Your organization is referred to as a Subrecipient.

As a condition of your organization receiving federal recovery funds from the State, the authorized representative below hereby (i) certifies that your organization will carry out the activities listed in section 602(c) of the Act and (ii) agrees to the terms attached hereto. Your organization also agrees to use the federal recovery funds as specified in bills passed by the General Assembly and signed by the Governor.

Under penalty of perjury, the undersigned official certifies that the authorized representative has read and understood the organization's obligations in the Assurances of Compliance and Civil Rights Requirements, that any information submitted in conjunction with this assurances document is accurate and complete, and that the organization is in compliance with the nondiscrimination requirements.

Subrecipient Name \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

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

Signature: \_\_\_\_\_

AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS  
TERMS AND CONDITIONS

1. Use of Funds.
  - a. Subrecipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 602(c) of the Social Security Act (the Act) and Treasury's regulations implementing that section and guidance.
  - b. Subrecipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Subrecipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Subrecipient agrees to comply with any reporting obligations established by Treasury as they relate to this award. Subrecipient also agrees to comply with any reporting requirements established by the Governor's Office and Office of the State Controller.
4. Maintenance of and Access to Records
  - a. Subrecipient shall maintain records and financial documents sufficient to evidence compliance with section 602(c), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Subrecipient in order to conduct audits or other investigations.
  - c. Records shall be maintained by Subrecipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Subrecipient may use funds provided under this award to cover both direct and indirect costs. Subrecipient shall follow guidance on administrative costs issued by the Governor's Office and Office of the State Controller.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Subrecipient.
8. Conflicts of Interest. The State of Colorado understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy

is applicable to each activity funded under this award. Subrecipient and Contractors must disclose in writing to the Office of the State Controller or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112. The Office of the State Controller shall disclose such conflict to Treasury.

9. Compliance with Applicable Law and Regulations.

a. Subrecipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Subrecipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Subrecipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.

b. Federal regulations applicable to this award include, without limitation, the following:

- i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
- ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iv. OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (Agreements and Subcontractors described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
  - i. Subrecipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - ii. Government wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - iii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- iv. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.

- v. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Subrecipient’s noncompliance with section 602 of the Act, other applicable laws, Treasury’s implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Subrecipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Subrecipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or Agreements, and/or any other remedy available by law.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRF0126 awarded to the State of Colorado by the U.S. Department of the Treasury.”

14. Debts Owed the Federal Government.

- a. Any funds paid to the Subrecipient (1) in excess of the amount to which the Subrecipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by the Subrecipient shall constitute a debt to the federal government.
- b. Any debts determined to be owed to the federal government must be paid promptly by Subrecipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Subrecipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Subrecipient or third persons for the actions of Subrecipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any Agreement, or Subcontractor under this award.
- b. The acceptance of this award by Subrecipient does not in any way establish an agency relationship between the United States and Subrecipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Subrecipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal Agreement or grant, a gross waste of federal funds, an abuse of authority relating to a federal Agreement or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal Agreement (including the competition for or negotiation of an Agreement) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;

- iii. The Government Accountability Office;
- iv. A Treasury employee responsible for Agreement or grant oversight or management;
- v. An authorized official of the Department of Justice or other law enforcement agency;
- vi. A court or grand jury; or
- vii. A management official or other employee of Subrecipient, Contractor, or Subcontractor who has the responsibility to investigate, discover, or address misconduct.

c. Subrecipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Subrecipient should encourage its Contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

1. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Subrecipient should encourage its employees, Subrecipients, and Contractorsto adopt and enforce policies that ban text messaging while driving, and Subrecipient should establish workplace safety policies to decrease accidents caused by distracted drivers.



## ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

### ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Subrecipient provides the assurances stated herein. The federal financial assistance may include federal grants, loans and Agreements to provide assistance to the Subrecipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass Agreements of guarantee or insurance, regulated programs, licenses, procurement Agreements by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Subrecipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Subrecipient's program(s) and activity(ies), so long as any portion of the Subrecipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Subrecipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Subrecipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Subrecipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Subrecipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Subrecipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Subrecipient's programs, services, and activities.
3. Subrecipient agrees to consider the need for language services for LEP persons when Subrecipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Subrecipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Subrecipient and Subrecipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Subrecipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every Agreement or agreement subject to Title VI and its regulations between the Subrecipient and the Subrecipient's sub-grantees, Contractors, Subcontractors, successors, transferees, and assignees:

*The sub-grantee, Contractor, Subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subrecipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this Agreement or agreement.*

6. Subrecipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Subrecipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Subrecipient for the period during which it retains ownership or possession of the property.
7. Subrecipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Subrecipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Subrecipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Subrecipient also must inform the Department of the Treasury if Subrecipient has received no complaints under Title VI.
9. Subrecipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Subrecipient and the administrative agency that made the finding. If the Subrecipient settles a case or matter alleging such discrimination, the Subrecipient must provide documentation of the settlement. If Subrecipient has not been the subject of any court or administrative agency finding of

discrimination, please so state.

10. If the Subrecipient makes sub-awards to other agencies or other entities, the Subrecipient is responsible for ensuring that sub-Subrecipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub- Subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

## **EXHIBIT P**

### **SLFRF SUBRECIPIENT QUARTERLY REPORT**

#### **1. SLFRF SUBRECIPIENT QUARTERLY REPORT WORKBOOK**

- 1.1 The SLFRF Subrecipient Quarterly Report Workbook must be submitted to the State Agency within ten (10) days following each quarter ended September, December, March and June. The SLFRF Subrecipient Quarterly Report Workbook can be found at:

<https://osc.colorado.gov/american-rescue-plan-act> (see SLFRF Grant Agreement Templates tab)

**EXHIBIT Q**

**SAMPLE SLFRF REPORTING MODIFICATION FORM**

Local Agency:		Agreement No:	
Project Title:		Project No:	
Project Duration:	To:	From:	
State Agency:	CDOT		

This form serves as notification that there has been a change to the reporting requirements set forth in the original SLFRF Grant Agreement.

The following reporting requirements have been (add/ remove additional rows as necessary):

Updated Reporting Requirement (Add/Delete/Modify)	Project Number	Reporting Requirement

By signing this form, the Local Agency agrees to and acknowledges the changes to the reporting requirements set forth in the original SLFRF Grant Agreement. All other terms and conditions of the original SLFRF Grant Agreement, with any approved modifications, remain in full force and effect. Grantee shall submit this form to the State Agency within 10 business days of the date sent by that Agency.

\_\_\_\_\_   
 Local Agency

\_\_\_\_\_   
 Date

\_\_\_\_\_   
 CDOT Program Manager

\_\_\_\_\_   
 Date

**EXHIBIT R**  
**APPLICABLE FEDERAL AWARDS**

**FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD**

Federal Awarding Office	US Department of the Treasury
Grant Program	Coronavirus State and Local Fiscal Recovery Funds
Assistance Listing Number	21.027
Federal Award Number	SLFRP0126
Federal Award Date *	May 18, 2021
Federal Award End Date	December 31, 2024
Federal Statutory Authority	Title VI of the Social Security Act, Section 602
Total Amount of Federal Award (this is <u>not</u> the amount of this grant agreement)	\$3,828,761,790

\* Funds may not be available through the Federal Award End Date subject to the provisions in §2 and §5 below.

**EXHIBIT S**

**PII Certification**

**STATE OF COLORADO**

**LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A  
DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, \_\_\_\_\_, on behalf of \_\_\_\_\_ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

## EXHIBIT T

### CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE

Checklist for required exhibits due to funding sources. Required Exhibits are dependent on the source of funding. This is a guide to assist in the incorporation and completion of Exhibits in relation to funding sources.

Exhibit	Funding only from FHWA	Funding only from ARPA	FHWA and ARPA Funding
<b>EXHIBIT A,</b> SCOPE OF WORK	✓	✓	✓
<b>EXHIBIT B,</b> SAMPLE OPTION LETTER	✓	✓	✓
<b>EXHIBIT C,</b> FUNDING PROVISIONS	✓	✓	✓
<b>EXHIBIT D,</b> LOCAL AGENCY RESOLUTION (IF APPLICABLE)	✓	✓	✓
<b>EXHIBIT E,</b> LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST	✓	✓	✓
<b>EXHIBIT F,</b> CERTIFICATION FOR FEDERAL-AID AGREEMENTS	✓		✓
<b>EXHIBIT G,</b> DISADVANTAGED BUSINESS ENTERPRISE	✓		✓
<b>EXHIBIT H,</b> LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES	✓		✓
<b>EXHIBIT I,</b> FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS	✓		✓
<b>EXHIBIT J,</b> ADDITIONAL FEDERAL REQUIREMENTS	✓		✓
<b>EXHIBIT K,</b> FFATA SUPPLEMENTAL FEDERAL PROVISIONS	✓	✓	✓
<b>EXHIBIT L,</b> SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM	✓	✓	✓
<b>EXHIBIT M,</b> OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS	✓		✓



<b>EXHIBIT N,</b> FEDERAL TREASURY PROVISIONS		✓	✓
<b>EXHIBIT O,</b> AGREEMENT WITH SUBRECIPIENT OF FEDERAL RECOVERY FUNDS		✓	✓
<b>EXHIBIT P,</b> SLFRF SUBRECIPIENT QUARTERLY REPORT		✓	✓
<b>EXHIBIT Q,</b> SLFRF REPORTING MODIFICATION FORM		✓	✓
<b>EXHIBIT R,</b> APPLICABLE FEDERAL AWARDS		✓	✓
<b>EXHIBIT S,</b> PII CERTIFICATAION	✓	✓	✓
<b>EXHIBIT T,</b> CHECKLIST OF REQUIRED EXHIBITS DEPENDENT ON FUNDING SOURCE	✓	✓	✓



# Laredo Street over High Line Canal Bridge Replacement



December 11, 2023

Bret Banwart, Engineering Supervisor (Public Works)



# Laredo St. over Highline Canal Bridge – IGA

1. Existing Condition
2. History of Grant & Project Overview
3. Schedule & Budget
4. Question for the Council



Spalling in East curb face.



Spalling with exposed corroding rebar in Abutment 2 backwall, Bay C.



Close up view - Condition of cracking and patchwork in deck surface.



Cracking, spalling with exposed corroding rebar in ends of various girders - Girder 1 at Abutment 2 shown.

# Laredo St. over Highline Canal Bridge



## HISTORY of Grant Request & Project Overview

### October 26, 2022

City of Aurora Requests Grant to Replace Existing Bridge through Colorado's Special Highway Committee through the Colorado Municipal League (CML)

### April 23, 2023

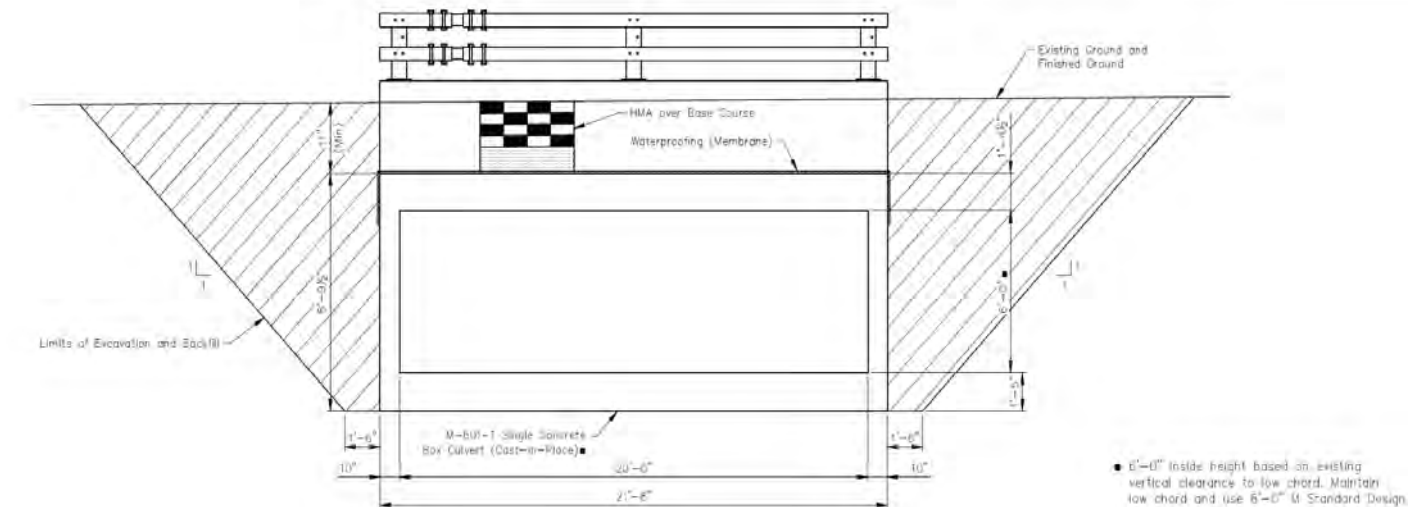
Aurora Receives Approval Letter from CML to fund Bridge Replacement

### October 26, 2023, TAPS Committee

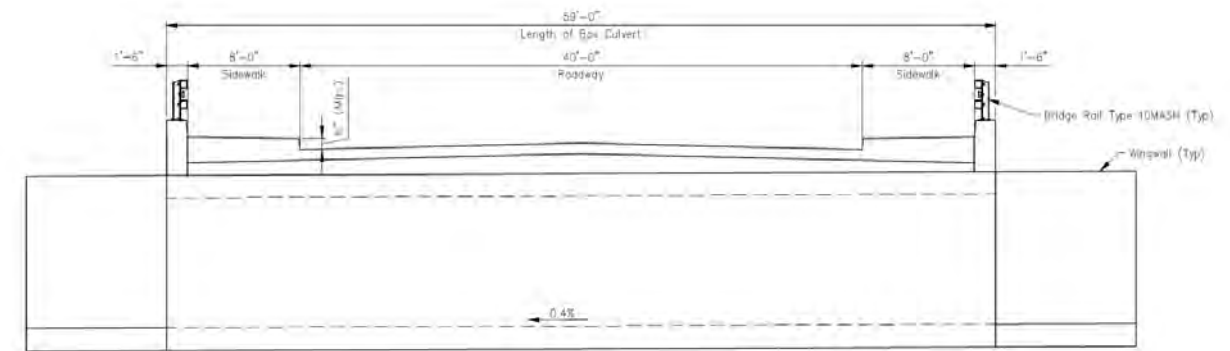
Request Approval from TAPS to execute CDOT IGA and fund Local Match

### SCOPE:

- Design and Construction – Vehicular Bridge:
  - Spans Laredo Street over Highline Canal
- Replacing aging structurally **Poor** category Bridge:
  - Improving Safety and Rideability
- **To Include:**
  - New CDOT Approved Bridge Rail and approach Rails
  - Concrete Box Culvert (CBC) Bridge ~22 feet long, 59 feet wide
  - New wingwalls, wider sidewalks
  - Correct Existing Non-Standard Bridge Items
  - Improve Channel Flow



TYPICAL SECTION  
(Looking West)



SECTION



# Laredo St. over Highline Canal Bridge

## Schedule & Budget

### Proposed Schedule:

- FY 2024 – CDOT IGA Execution
- FY 2024/25 - Environmental, Design, & Clearances
- FY 2026/27 - Construction
- FY 2027/28 – New Structure open to full Traffic

**\*\* CDOT has implemented a **four-year time limit** for all awarded Off-System Bridge Program funds to begin the bidding process**

**Total Estimated Bridge Replacement Cost: \$2,223,700**

### Funding Share

	Funding
Federal (80%)	\$1,778,960
Local (20%)	\$444,740
<b>TOTALS</b>	<b>\$2,223,700</b>

- The Federal funds will be Reimbursed through CDOT



# Laredo St. over Highline Canal Bridge

**Question for the Council:**  
**1. Approval of CDOT IGA**

# Special Highway Committee

CML - 1144 Sherman Street, Denver, Colorado 80203  
CCI - 800 Grant Street, Suite 500, Denver, Colorado 80203

Ph: 303-831-6411  
Ph: 303-861-4076

April 28, 2023

Mansour (Mike) Mohseni  
Project Engineer, PE  
Public Works Department | City of Aurora *office* 303.739.7687

Re: Off-System Bridge Program Grant Awards

Dear Mr. Mohseni:

On November 14, 2022 the Special Highway Committee met to consider and evaluate local government bridge grant applications for rehabilitation or replacement of substandard bridges and make funding recommendations to the Colorado Department of Transportation (CDOT). The Committee prioritized the Municipal and County bridge projects submitted, considering bridge sufficiency ratings, structural deficiency and functional obsolescence, average daily traffic, and grant history. The committee requested that the City of Aurora resubmit their application, and the committee considered that resubmission on April 14 2023.

We are pleased to inform you that the Committee voted to fully fund the request from City of Aurora, in the amount of \$1,778,960, for the rehabilitation of the Laredo Street Bridge bridge. The recommendations of the Special Highway Committee have been forwarded to the Bridge Section at CDOT. We would encourage you to contact your local CDOT Engineer (see attachment) to initiate both the programming of the bridge and the grant contracting process.

**Please note: CDOT has implemented a four-year time limit for all awarded Off-System Bridge Program funds to begin the bidding process. If your municipality is unable to secure the 20 percent match or get the design completed and go to ad within this time, CDOT will request the funds to be released and reallocated to other projects.**

If you have any questions, please do not hesitate to contact me at (303) 831-6411 or [mmackillop@cml.org](mailto:mmackillop@cml.org).

Sincerely,  
Meghan MacKillop, Legislative & Policy Advocate  
Colorado Municipal League

*Note: letter transmitted via email*

**Transportation, Airports and Public Works (TAPS) Policy Committee Meeting**

October 26, 2023

Members Present: Council Member (CM) Juan Marcano, Chair; Council Member (CM) Ruben Medina

Members Absent: Council Member (CM) Angela Lawson, Vice-Chair

Others Present: Carlie Campuzano, Elly Watson, Julie Patterson, Traci Burton, Brian Rulla, Lynne Center, Ryan Germeroth, Tom Worker-Braddock, Mac Callison, Huiliang Liu, Haley Busch Johansen, Michelle Gardner, Cindy Colip, Laura Perry, Scott Bauman, Cathy Valencia, Bret Banwart, Brianna Medema, Carl Harline, Leslie Gaylord, Mike Mohseni, Mindy Parnes, Rachel Allen, Jeannine Rustad.

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**1. WELCOME AND INTRODUCTION**

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**2. APPROVAL OF MINUTES**

The minutes for the September 28, 2023 TAPS meeting were approved as written.

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**3. CONSENT ITEMS (None)**

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**4. GENERAL BUSINESS**

**4.a Consideration to Approve a Resolution for the IGA with CDOT for Laredo St. over High Line Canal Bridge Replacement Project**

**Summary of Issue and Discussion:**

Mike Mohseni, Project Engineer Public Works, presented the Laredo Street over High Line Canal Bridge replacement, including existing conditions, history of grant and project overview, schedule, and budget. He displayed photos of the issues on the High Line Canal Bridge and discussed the scope of work, including design and construction to vehicular bridge. He explained replacement of the existing bridge with a concrete box culvert (CBC), which includes new standard bridge rails, wingwalls, wider sidewalks, and improved channel flow. Mike Mohseni also briefly discussed the proposed schedule and funding.

**Committee Discussion:**

CM Medina stated the bridge replacement was overdue and was glad it was getting attention.



**Outcome:** The Committee recommended the item move forward to Study Session.

**Follow-Up Action:** Staff will move forward the item to Study Session

#### **4.b Vision Zero and Transportation Evaluations**

##### **Summary of Issues and Discussion:**

Carlie Campuzano, Traffic Manager, discussed Vision Zero and transportation evaluations. She explained what the Vision Zero initiative is and discussed the safe system approach to safety evaluations, crash metrics, and next steps. She stated that agencies that adopted Vision Zero committed to reducing death and serious injuries to zero within a certain timeframe. C. Campuzano explained how the City conducts safety reviews; how they use the safe system approach; and national, Colorado, and Aurora crash metrics; and current and planned projects, including a safety action plan, transportation master plan, grant and city funded safety designs and construction projects. She discussed the fiscal impact of adopting a Vision Zero program, which was estimated at a minimum of \$2.4 million per year.

##### **Committee Discussion:**

CM Medina asked if they had seen patterns in specific areas.

C. Campuzano said there were some patterns within certain areas, such as Colfax with pedestrian crashes, and staff are working on different strategies to address that pattern. She added that having a lot of patterns made it hard to pinpoint the exact cause and sometimes more than one factor was involved in crashes.

CM Marcano wanted to know the Vision Zero Program benefits.

C. Campuzano responded the benefits would hopefully be to decrease crashes. She also mentioned the City is still eligible to apply for grant funding for safety grants without having a Vision Zero program.

CM Marcano asked if pursuing their own plan and commitment made it more likely to receive the funding.

C. Campuzano said that is the goal of the Safety Action Plan, which will give staff a comprehensive list of projects and help be more competitive for future grants.

CM Marcano asked if they had any information on if billboards and roadside advertisement impacted distracted driving.

C. Campuzano stated they did not.

CM Marcano asked what they could do to make arterials safer.

C. Campuzano expressed that pedestrian safety across arterials is a tough thing to solve, but there are different strategies depending on the crash patterns present. Some of these strategies are listed on the Federal Highway Administration's website as proven safety countermeasures.

CM Marcano asked what had been seen in other jurisdictions with Vision Zero.

C. Campuzano said they talked to Denver, and they allocate funding to implement safety projects. She said there are many factors that influence why fatal crashes occur and it is not an easy or straightforward issue to address.

**Outcome:** Information only.

**Follow-Up Action:** No follow-up needed.

#### **4.c Fiber & Microtrenching**

##### **Summary of Issues and Discussion:**

Haley Johansen, City Engineer in Public Works, presented information on the City's fiber optic program and evaluation of the Microtrenching method for installation. She discussed how fiber is permitted, information on a new method called Micro-trenching, along with current and next steps. She defined fiber optics, what they provided, transmission, installation, and telecommunication permitting. H. Johansen talked about micro-trenching and explained the benefits and different methods of fiber installations, showing example photos of Micro-trenching installations. She expressed the identified concerns of Micro-trenching, including pavement integrity, restoration of disturbed areas, broken lines, methodology, maintenance liability, and pricing info. She said Staff did not recommend micro-trenching due to the concerns.

##### **Committee Discussion:**

CM Medina asked if the cable put in his neighborhood was fiber and permitted by the city.

Leslie Gaylord asked CM Medina to send her his address so she could look it up on the permit to see who accessed that easement. She added that fiber was allowed to be used in utility easements.

CM Marcano said the shallow method was not ideal and asked for information on the deeper method.

L. Center said they seen a lot of thin neighborhood streets and when milling they were already into dirt. She said the biggest concern with both methods was creating a long longitudinal crack in the roadway that had to be maintained. Those cracks can continue across the sealant and compromises that. Sometimes, the fiber doesn't get below the frost line and can creep up into the trench and out of the surface.

C. Colip said they met recently with another fiber company interested in installation in the city and that company used a standard method of installment that met the roadway criteria.

L. Gaylord stated the 30-inch depth and utility requirement was easier when it came to utility callout and other installations. She said they had 19 other master licenses with multiple fiber companies that held the standard for boring within the city, so companies can provide and expand those services.

CM Marcano said part of the concern was who would be liable for the damage and maintenance or repair costs. He asked if they could come to an agreement that if it did not come out as proposed, the company was completely liable for 100% of the cost of repairs.

Cindy Colip said they would have to establish the standards and criteria in the roadway manual, develop the plan submittal requirements, and include the liability for damage. She said it would require additional FTEs and inspectors. C. Colip said there are concerns, as discussed, on pavement integrity and workload for inspections.

CM Marcano said he understood we would need an SOP and the right staffing. However, he was aware of another provider who wanted to come into Aurora, and they could not afford to do it, so they backed out. CM Marcano stated we are at a competitive disadvantage because we have one provider. C. Marcano said that if there was a provider willing to assume liability and hit a \$70 price point for gigabit service to citizens, he would be interested in that. C. Marcano stated that Lakewood has started allowing Microtrenching.

L. Gaylord stated that Lakewood has allowed Microtrenching with some different requirements and standards to follow internally.

C. Colip stated they would reach out to Lakewood and get some understanding of the impact they have seen as well as some other communities that have been approached to see what decisions were made and whether they were able to get the liability for maintenance and repair. CM Marcano said he would appreciate that.

**Outcome:** Information only.

**Follow-Up Action:** No follow-up needed.

#### **4.d Consideration to Approve a Resolution for an IGA between the City of Aurora and the City and County of Denver for the Colfax Bus Rapid Transit Project Construction Phase**

##### **Summary of Issues and Discussion:**

C. Campuzano, Traffic Manager, presented on a resolution for an IGA between the City and County of Denver and City of Aurora for the Colfax Bus Rapid Transit (BRT) Project for the construction phase. She gave an overview of the BRT Project which has been presented in more detail during previous TAPS meetings and full council meetings. The project includes new shelters, benches, trash receptacles, lit maps with schedule displays, and branding in the Aurora section. She discussed staff recommendations, funding, and project timeline.

##### **Committee Discussion**

CM Marcano and CM Medina expressed that they were happy the project was moving forward.

**Outcome:** The Committee recommended the item move forward to Study Session.

**Follow-Up Action:** Staff will move forward the item to Study Session.

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## **5. MISCELLANEOUS MATTERS (None)**

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## **6. ANTICIPATED TOPICS FOR NEXT MEETING**

- Council Chamber ADA Improvement Project
  - Multimodal Transportation Master Plan Update
- 

## 7. CONFIRM NEXT MEETING

The next meeting was confirmed for November 30, 2023, at 1:00 PM. It will be a virtual meeting.

Approved:  11.30.2023  
CM Juan Marcano, Committee Chair Date



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> An Intergovernmental Agreement (IGA) Between Aurora and the Aerotropolis Regional Transportation Authority (ARTA) for the I-70 and Picadilly Interchange Funding Contributions (Resolution)
<b>Item Initiator:</b> Cindy Colip, Public Works Director
<b>Staff Source/Legal Source:</b> Cindy Colip, Public Works Director/ Michelle Gardner, Senior Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 3.2--Reduce travel time and reduce congestion and provide expanded multi-modal mobility choices

### COUNCIL MEETING DATES:

**Study Session:** 12/11/2023

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Cindy Colip, Public Works Director / Michelle Gardner, Senior Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up:** *(Check all that apply)*

- 
- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

On April 23, 2018 Regular Meeting, Council approved the award of an openly solicited contract for the I-70/Picadilly NEPA Re-Evaluation and Preliminary Design Services to HDR, Inc in the amount of \$1,172,010.70.

On May 7, 2018 Weekly Report of Purchasing Actions, Amendment No. 1 of the HDR contract was reported to Council in the amount of \$49,000.00 for services involving pursuit of the federal TIGER program grant.

On June 24, 2019 Regular Meeting, Council approved signing the Resolution agreeing to an Intergovernmental Agreement (IGA) between the City of Aurora and Colorado Department of Transportation (CDOT) to establish a payment method for review fees associated with the 1601 project approval process.

On August 12, 2019 Weekly Report of Purchasing Actions, Amendment No. 2 of the HDR contract was reported to Council in the amount of \$21,974.00 for services involving pursuit of the federal BUILD program grant.

On February 10, 2020 Weekly Report of Purchasing Actions, Amendment No. 3 of the HDR contract was reported to Council in the amount of \$29,000.00 for immediate execution of preliminary design services resultant from the BUILD Grant award.

On February 24, 2020 Regular Meeting, Council approved Amendment No. 4 of the HDR contract in the amount of \$913,467.00 for addition of 30% Design including Geotechnical Investigation, Structural Selection and ROW Plan Preparation resultant from the Build Grant award.

On July 23, 2020 Meeting of the Transportation, Airports and Public Works Policy Committee staff provided an informational update on the status of the I-70 / Picadilly Interchange Project. (minutes attached)

On August 3, 2020 Regular Meeting, Council approved the award of a single source contract to HDR in the amount of \$1,489,043.75 for Design-Build Procurement and Program Management Consulting Services for the I-70 / Picadilly Interchange Project.

On January 25, 2021 Regular Meeting, Council approved Ordinance Number 2021-06 authorizing the use of eminent domain for acquisition of land interests necessary for construction of the I-70/Picadilly Interchange Project.

On September 13, 2021 Regular Meeting, Council approved the acquisition of real property interests for an amount not to exceed \$2,801,418 plus incidental expenses and closing costs.

On October 25, 2021 Regular Meeting, Council approved the initial Funding Intergovernmental Agreement between the City and CDOT (R2021-121).

On November 28, 2022 Regular Meeting, Council approved the award to Lawrence Construction Company, Littleton, CO with a Guaranteed Maximum Price of \$69,985,300.00 for the I70 Picadilly Design/Build project: R-2069, including a 10% contingency of \$6998,530.00.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

**Background**

The area near Denver International Airport is rapidly developing and is the heart of a planned Colorado Aerotropolis—a collaborative effort to develop the area surrounding the airport into a world-class residential, commercial, industrial, and logistics community. Today, there is a gap in the arterial roadway grid on Picadilly Road at I-70 that negatively impacts local and regional traffic and freight transporters traveling to and from the rapidly developing Colorado Aerotropolis area. The insufficient infrastructure connectivity results in severe congestion on Tower Road and Gun Club Road, which run parallel to Picadilly Road to the west and east, respectively.

The Project will construct a new diverging diamond interchange on I-70 at Picadilly Road in Aurora, Colorado. The Project will facilitate much-needed north-south connectivity on Picadilly Road and provide critical local access to I-70 for the growing development in the Colorado Aerotropolis area. The interchange will improve access for freight commerce, ease congestion, improve safety, and drive job creation, while supporting the Colorado Aerotropolis as a rapidly expanding economic hub.

Additionally, The Project intends to provide the logical full movement connection for US-40 and Business 70 (Colfax Avenue) to I-70 in the most efficient manner. This is key to providing transportation network clarity and expectation to customers seeking access to and coming from the US-40 corridor immediately west of this interchange.

The City first began development of the project in 2018 when it issued an RFP for Consulting Services to advance the NEPA (National Environmental Policy Act) clearance and Preliminary Design efforts with the goal of establishing project readiness for federal grant opportunities. In 2019, a 3<sup>rd</sup> grant application proved successful in the BUILD (Better Utilizing Infrastructure to Leverage Development) USDOT program. At that time, the project was advanced utilizing a Design/Build Alternative Delivery model to meet the timeline requirements of the grant program.

### **Design/Build Alternative Delivery**

The BUILD Grant program has specific requirements for the obligation of funding within a short timeframe of notice of award. These requirements resulted in City staff evaluating multiple delivery methods, and ultimately the design/build model was selected to achieve project goals and adhere to the grant program requirements.

**The RFP for a design/build delivery is a lengthy and detailed document because it defines the owner's complete expectations for the project's design and construction. Development of a thoughtful and complete document is critical to a project's success. Therefore, to aid with the design/build procurement process the City contracted with a Procurement and Program Management consultant. The role of that consultant was to do more than just prepare performance criteria. The consultant developed a project design through design development (approximately 30% of the design work) and prepared scope of work documents, which forms the basis for competitive selection of the design/build team. The consultant specified the project's functional and aesthetic requirements but left the details of construction technology up to the design/build team. The design/build team then has single point responsibility for final design and construction of the project.**

**The strategy of detailed RFP development described above is referred to as 'bridging'. Significant advantages of bridging arise from the method's focus on communicating the owner's intentions for the project, and the owner has an opportunity to retain the desired level of control of the design, design details, quality of engineering and quality of construction. Other advantages are that the owner obtains a highly enforceable fixed price for construction more quickly than in the traditional design-bid-build method.**

The design/build team selection process consisted of three phases including a Statement of Qualifications submittal phase, followed by a phase for pre-qualified teams to respond to a draft RFP where proposers can suggest changes to the RFP that they believe would lead to a more successful project and then a final phase consisting of prequalified teams responding a final RFP and evaluated on technical criteria and costs. Lawrence Construction was the successful bidder with a Guaranteed Maximum Price of \$69,985,300.00 for the I70 Picadilly Design/Build project: R-2069, including a 10% contingency of \$6,998,530.00.

### **Project Funding**

The cost estimate for the project was first developed in 2017 for the purposes of federal grant pursuit(s) when the project was advancing through the federal NEPA (National Environmental Policy Act) and FHWA (Federal Highway Administration) clearance and approval process. Since that time significant engineering efforts have refined the project scope, and there has been a historic increase in engineering and construction industry costs beyond normal inflationary trends. Throughout that time, city staff engaged with 3<sup>rd</sup> party industry experts to track and monitor the unprecedented trends. Detailed project scope specific analysis was required to determine how market conditions would affect the project costs. Those efforts were key in the establishment of the Upset Amount published in the Final RFP document as well as the current project budget.

### **ARTA Contribution**

The project is included in ARTA's authorized Regional Transportation Improvements and ARTA's Capital Plan includes a financial contribution to support the project. The city is responsible for project planning, design and construction. ARTA agrees to contribute to the city an amount not to exceed \$20,000,000.00 for the planning, design and construction.

The project funding summary with sources and uses is attached.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact       Budgeted Expenditure Impact       Non-Budgeted Expenditure Impact  
 Workload Impact       No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

49666 / 68410 (170 Picadilly FASTER Sfty/CIP Construction Costs): \$8,500,000.00 (Contract Costs)  
49667 / 68410 (170 Picadilly BUILD Grant/CIP Construction Costs): \$31,250,000.00 (Contract Costs)  
49678 / 68410 (170 Picadilly City Funds/CIP Construction Costs): \$30,235,300.00 (Contract Costs) and  
\$6,998,530.00 (10% Contingency)

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

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**QUESTIONS FOR COUNCIL**

Does Council wish to approve the resolution for the IGA between Aurora and ARTA for the I-70 and Picadilly Interchange Funding Contributions?

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**LEGAL COMMENTS**

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. Section 29-1-203(1)). City Council may, by resolution, enter into intergovernmental agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter Section 10-12). (M. Gardner)



RESOLUTION NO. R2023- \_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA,  
COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT  
BETWEEN CITY OF AURORA AND AEROTROPOLIS REGIONAL  
TRANSPORTATION AUTHORITY (ARTA) REGARDING COOPERATIVE  
PROJECT FUNDING (Picadilly Road at Interstate 70)

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

WHEREAS, the Aerotropolis Regional Transportation Authority (“ARTA”) was organized in accordance with the RTA Law and pursuant to the Intergovernmental Agreement Among the Board of County Commissioners of the County of Adams, the City of Aurora and the Aerotropolis Area Coordinating Metropolitan District Establishing the Aerotropolis Regional Transportation Authority dated February 27, 2018, as supplemented by a first supplement last executed July 8, 2021, and as may be further amended and supplemented from time to time (the “Establishing Agreement”), for the general purposes of constructing, or causing to be constructed, a Regional Transportation System as set forth in the Capital Plan of the Establishing Agreement generally to serve the regional transportation infrastructure needs of the area surrounding Denver International Airport; and

WHEREAS, the City of Aurora (“City”) is undertaking the planning, design, construction, and completion of a new, diamond interchange at the intersection of Interstate 70 and Picadilly Road, in the City of Aurora (as further described herein, the “Project”); and

WHEREAS, the Project is included in ARTA’s authorized Regional Transportation Improvements, and ARTA’s Capital Plan includes a financial contribution by ARTA to support the Project; and

WHEREAS, ARTA previously issued general obligation bonds in 2019 and in 2021 (the “Prior Bonds”) and expects to issue several additional series of bonds or other financial obligations in a time frame which allows ARTA to fund and facilitate the completion of the Regional Transportation System Improvements, generally, and to support the Project, specifically, consistent with the phasing set forth in the Capital Plan and this Agreement (the “Future ARTA Bonds,” and together with the Prior Bonds, the “ARTA Bonds”); and

WHEREAS, the Parties understand and agree they have a shared interest in facilitating the timely and efficient completion of the Project, and the Project will benefit both Parties and their respective residents, constituents, and taxpayers; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement (“IGA”) to set forth their mutual understanding regarding ARTA’s proposed contribution to the Project, together with such other matters set forth in the IGA; and

WHEREAS, on November 17, 2023, ARTA’s Board approved of the IGA, contingent upon Aurora City Council’s approval; and

WHEREAS, the City Council is authorized by City Charter 10-12 to enter into this type of agreement; and

WHEREAS, the Aurora City Council finds and determines that it is in the best interest of the City and its residents to approve the IGA Between the City and ARTA Regarding Cooperative Project Funding (Picadilly Road at Interstate 70).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The IGA Between the City and ARTA Regarding Cooperative Project Funding (Picadilly Road at Interstate 70) is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the IGA on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

RLA

Michelle Gardner  
MICHELLE GARDNER, Sr. Assistant City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA AND  
AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY REGARDING  
COOPERATIVE PROJECT FUNDING**  
(Picadilly Road at Interstate 70)

This INTERGOVERNMENTAL AGREEMENT REGARDING COOPERATIVE PROJECT FUNDING (Picadilly Road at Interstate 70) (this “Agreement”) is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2023, (the “Effective Date”), by and among the **CITY OF AURORA, COLORADO**, a home rule municipal corporation of the Counties of Adams, Arapahoe and Douglas (the “City”), and the **AEROTROPOLIS REGIONAL TRANSPORTATION AUTHORITY**, a political subdivision and body corporate of the State of Colorado formed pursuant to the Regional Transportation Authority Law, Sections 43-4-601, *et seq.*, C.R.S. (“RTA Law”) (“ARTA,” or the “Authority”). The City and ARTA are referred to collectively herein as the “**Parties**” and individually as a “**Party**.”

**RECITALS**

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

B. ARTA was organized in accordance with the RTA Law and pursuant to the Intergovernmental Agreement Among the Board of County Commissioners of the County of Adams, the City of Aurora and the Aerotropolis Area Coordinating Metropolitan District Establishing the Aerotropolis Regional Transportation Authority dated February 27, 2018, as supplemented by a first supplement last executed July 8, 2021, and as may be further amended and supplemented from time to time (the “**Establishing Agreement**”), for the general purposes of constructing, or causing to be constructed, a Regional Transportation System as set forth in the Capital Plan of the Establishing Agreement generally to serve the regional transportation infrastructure needs of the area surrounding Denver International Airport (any capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Establishing Agreement).

C. The City intends to undertake the planning, design, construction and completion of a new, complete interchange at the intersection of Interstate 70 and Picadilly Road, in the City of Aurora (as further described herein, the “**Project**”).

D. The Project is included in ARTA’s authorized Regional Transportation Improvements, and ARTA’s Capital Plan includes a financial contribution by ARTA to support the Project.

E. ARTA previously issued general obligation bonds in 2019 and in 2021 (the “**Prior Bonds**”) and expects to issue several additional series of bonds or other financial obligations in a time frame which allows ARTA to fund and facilitate the completion of the Regional Transportation System Improvements, generally, and to support the Project, specifically,

consistent with the phasing set forth in the Capital Plan and this Agreement (the “**Future ARTA Bonds**,” and together with the Prior Bonds, the “**ARTA Bonds**”).

F. The Parties understand and agree they have a shared interest in facilitating the timely and efficient completion of the Project, and the Project will benefit both Parties and their respective residents, constituents, and taxpayers.

G. The Parties desire to enter into this Agreement in order to set forth their mutual understanding regarding ARTA’s proposed contribution to the Project, together with such other matters, all as further set forth herein.

## AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the foregoing recitals which are incorporated herein as though fully set forth below, the Parties agree as follows:

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

2. City Responsibility For Project Planning, Design and Construction. The Parties understand and agree that the City, with coordination and cooperation from any and all applicable entities, as necessary, shall be primarily responsible for facilitating, overseeing, and completing the Project, including but not limited to completing all necessary planning, design, and construction, obtaining all necessary permits and approvals for construction, and securing all necessary funding.

3. The Project. The Project, as defined and used herein, shall be the planning, design and construction of a new, complete interchange at the intersection of Interstate 70 and Picadilly Road, in the City of Aurora, as depicted in the Project overview attached hereto as **Exhibit A** and incorporated by reference herein. The Parties understand and agree the Project will be managed and completed by the City, generally in accordance with Exhibit A and as further set forth herein. The total costs to complete the Project are currently estimated to be approximately One Hundred Million Dollars (\$100,000,000) (the “**Estimated Project Costs**”). The Parties further understand that funding for the total Estimated Project Costs is expected to come from several sources, including but not limited to the City, ARTA, the State of Colorado, the Federal Highway Administration, and others. The City, and not ARTA, shall be responsible for securing all necessary funds for the Project, subject to the ARTA Contribution provided in this Agreement.

4. ARTA Contribution. ARTA agrees to contribute to the City the amount not to exceed Twenty Million Dollars (\$20,000,000) (the “**ARTA Contribution**”) for the express limited purpose of funding the City’s actual costs associated with the planning, design and construction of the Project (the “Project Costs”), as follows:

4.1 ARTA intends to make \$17,500,000 in funds available for the ARTA Contribution from proceeds of ARTA Bonds issued no later than December 31, 2027.

4.2 ARTA intends to make the remaining \$2,500,000 in funds available for the ARTA Contribution from proceeds of ARTA Bonds issued no later than December 31, 2031.

4.3 With regard to Section 5.1 and 5.2, ARTA agrees it may, in its discretion, issue ARTA Bonds and/or fund the ARTA Contribution in advance of the timing set forth in Section 5.1 and 5.2, provided nothing in this Agreement obligates ARTA to prioritize the ARTA Contribution or the Project over, or to otherwise re-prioritize, the other components of ARTA's Regional Transportation Improvements as set forth in ARTA's Capital Plan.

4.4 ARTA agrees that it will, in good faith, within thirty (30) days of ARTA's issuance of ARTA Bonds which include funding for the Project, in whole or in part, and the receipt and appropriation of adequate funds by ARTA to fund the ARTA Contribution as set forth above, transfer such funds to City.

4.5 The ARTA Contribution funds may be transferred by any means mutually agreeable to the Parties.

5. Future ARTA Bonds. ARTA shall pursue the issuance of the Future ARTA Bonds in good faith in order to close and have proceeds available from each series of such Future ARTA Bonds to fund the ARTA Contribution as set forth in Section 5, above. If ARTA is unable for any reason to (1) close on the issuance of the Future ARTA Bonds within a timeline that complies with expected timing and amounts of the ARTA Contribution set forth herein, or (2) the proceeds of such Future ARTA Bonds are insufficient to fully fund the ARTA Contribution set forth herein, ARTA shall notify the City in writing describing the reason for such delay/insufficiency of funds and the expected new date(s) of issuance of the Future ARTA Bonds and/or shall provide financial projections regarding the potential availability and timing of funds for the ARTA Contribution. Notwithstanding the foregoing, nothing herein obligates ARTA to issue any of the ARTA Bonds or to issue any other bonds or enter into other financial obligations, at any time or in any amount, and nothing herein limits or otherwise affects the sole and absolute discretion and authority of the Board of Directors of ARTA to issue or enter into any of the same. However, ARTA agrees to act in good faith and to use its best efforts to comply with the timing and amounts of the ARTA Contribution set forth herein.

6. No Multi-Fiscal Year Obligation; Annual Appropriations; ARTA. It is hereby agreed and acknowledged that while this Agreement evidences a good faith intent of ARTA to issue the ARTA Bonds and fund the ARTA Contribution, all as further set forth herein, this Agreement shall not constitute or be interpreted as constituting a debt or indebtedness of ARTA within the meaning of any constitutional or statutory provision, nor shall it constitute a multiple fiscal year financial obligation of ARTA, and the issuance of the ARTA Bonds, and appropriation and expenditure of funds for the ARTA Contribution shall be at all times subject to the annual appropriations by ARTA's Board of Directors. ARTA may fund the ARTA Contribution with any legally available funds of the ARTA. Nothing herein is intended to be or shall be deemed or construed to as "Bonds", as defined in the Establishing Agreement.

7. No Multi-Fiscal Year Obligation; Annual Appropriations; City. This Agreement does not create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City. Any and all financial obligations of the City described hereunder are subject to annual budget and appropriations requirements of applicable law.

8. Use of ARTA Contribution Funds and Accounting. The City expressly agrees the ARTA Contribution funds shall only be used for the limited purpose of funding actual Project Costs. The City shall maintain or cause to be maintained full and complete records of actual Project Costs incurred and funds committed and expended by the City for actual Project Costs in accordance with generally accepted accounting principles. ARTA shall have the right to audit the City's financial records related to the Project during the Project and up to three (3) years after completion of the Project, subject to the City's records retention schedule. The cost of City staff time directly related to and necessary for the implementation of the Project may be considered and included in Project Costs, and such costs will be specifically documented in the City's Project records; provided, general administrative and overhead costs of the City not directly related to the Project shall not be considered and included in Project Costs. The City understands that ARTA intends to utilize tax exempt financing in order to obtain funds for the ARTA Contribution, and the City agrees that it will not take any action that impedes, violates, or otherwise jeopardizes such tax-exempt status of the funds associated with the ARTA Contribution or ARTA's ability to utilize the same as intended and set forth herein. This provision shall survive termination of this Agreement to the extent City records exist up to three years after completion of the Project.

9. Project Responsibility. As between the City and ARTA, the City shall have full responsibility for undertaking, or causing to be undertaken, the planning, design, and construction of the Project, including but not limited to obtaining any and all necessary permits or other approvals and complying with any and all local, state, and federal laws, rules and regulations applicable to the Project. ARTA shall not have any responsibility, except for the ARTA Contribution as set forth herein, associated with the Project or the City's undertaking of the Project. Consistent with the Establishing Agreement, ARTA shall not have any long term ownership, operation or maintenance responsibility for the Project by this Agreement. Any and all employees, contractors and agents engaged by the City to complete any portion of the Project at any time shall be the employees, contractors and/or agents of the City only, and shall not be considered or interpreted to be employees, contractors and/or agents of ARTA.

10. Communication. The City shall keep accurate records of the progress of the Project and shall provide status reports to ARTA, or its designee, on a regular basis (at a minimum on a quarterly basis), including progress updates, financial projections, and notice of any anticipated or unanticipated delays related to the Project. Said status reports shall include updates to the Project costs expended and the remaining costs projected to be expended through the Project completion, and shall note any variances from the estimated Project costs, as well as any adjustments to the time schedule for Project completion.

11. Project Cost Overruns and Underruns. ARTA agrees to fund the ARTA Contribution regardless whether the Project Costs are less than or in excess of the Estimated Project Costs, it being the understanding of the Parties that the ARTA Contribution is intended to

be a one-time, fixed amount funding contribution by ARTA toward the Project; provided, however, in the event the ARTA Contribution is not needed as determined by the City, in whole or in part, for the Project for any reason, including but not limited to the securing of sufficient funds by the City from other sources to supplant the ARTA Contribution, the ARTA Contribution, whether in whole or in part, shall be promptly returned to ARTA.

12. Term. This Agreement shall be effective as of the Effective Date set forth above and shall terminate upon payment of the ARTA Contribution by ARTA to the City and upon final completion of the Project.

13. Default/Remedies. In the event of a material breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity after the provision of thirty (30) days' prior written notice of the alleged breach or default to the other Party; provided, the Parties waive any claims against each other for consequential damages arising out of or relating to this Agreement, as between the Parties, including, but not limited to, special, incidental, consequential, or punitive damages of any kind arising out of or related to the performance or non-performance of the Agreement, and regardless of whether such losses, damages or liability arises from breach of contract or warranty, tort (including negligence), strict liability or otherwise. In the event of any litigation, arbitration or mediation to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall obtain as part of its judgment or award its reasonable attorneys' fees.

14. Notices and Communications. All notices, statements, demands, requirements, approvals or other communications and documents ("**Communications**") required or permitted to be given, served, or delivered by or to any Party or any intended recipient under this Agreement shall be in writing and shall be given to the applicable address set forth below ("**Notice Address**"). Communications to a Party shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such Party's Notice Address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the Party to whom notice is given at such Party's Notice Address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the Party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such Party at such Party's Notice Address; or (iv) on the date and at the time shown on the facsimile or electronic mail message if telecopied or sent electronically to the number or address designated in such Party's Notice Address and receipt of such telecopy or electronic mail message is electronically confirmed. The Notice Addresses for each Party are as follows:

If to ARTA:	Aerotropolis Regional Transportation Authority c/o CliftonLarsonAllen LLP Attention: Anna Jones 8390 E. Crescent Parkway, Suite 300 Greenwood Village, Colorado 80111 Phone: (303) 779-4525 Email: <a href="mailto:Anna.Jones@claconnect.com">Anna.Jones@claconnect.com</a>
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With copies to: Spencer Fane LLP  
Attention: Tom George  
1700 Lincoln Street, Suite 2000  
Denver, Colorado 80203  
Phone: (303) 839-3800  
Email: tgeorge@spencerfane.com

If to City: City of Aurora Public Works Department  
Attention: Cathleen Valencia  
Project Delivery Services Manager  
15151 E. Alameda Parkway, Suite 3200  
Aurora, Colorado 80012  
Phone: (303)739-7337  
Email: cvalenci@auroragov.org

With copies to: City of Aurora, City Attorney's Office  
15151 E. Alameda Parkway, Suite 5300  
Aurora, Colorado 80012  
Phone: (303)739-7030

15. Covenant of Good Faith and Fair Dealing. The Parties agree to act in good faith in dealing with one another, carrying out their responsibilities, and performing their obligations pursuant to this Agreement. Each Party hereby covenants to the other that it shall not undermine the rights or obligations of the other Party hereto with respect to the Agreement and it will cooperate with the other in achieving the purposes of this Agreement.

16. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

17. Entire Agreement; Amendments; Headings for Convenience Only; Not to be Construed Against Drafter; No Implied Waiver. This Agreement, along with the Establishing Agreement as referenced and incorporated herein, constitutes the entire agreement among the Parties hereto pertaining to the subject matter hereof. No change or addition is to be made to this Agreement except by written amendment executed by the Parties. The headings, captions and titles contained in this Agreement are intended for convenience of reference only and are of no meaning in the interpretation or effect of this Agreement. This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by one of the Parties or its counsel, since all Parties have contributed substantially and materially to the preparation hereof. No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any



right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by the other Party, shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

18. Governing Law. This Agreement is entered into in Colorado and shall be construed and interpreted under the law of the State of Colorado without giving effect to principles of conflicts of law which would result in the application of any law other than the law of the State of Colorado.

19. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.

20. Assignment; Binding Effect. No Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in each Party's sole and absolute discretion. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted assigns.

21. Counterparts; Copies of Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument. signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. This Agreement may be executed and delivered by electronic means, and execution and delivery of the signature page by such methods will be deemed to have the same effect as if the original signature had been delivered to the other Party.

22. Computation of Time Periods. All time periods referred to in this Agreement shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a national holiday.

23. No Waiver of Governmental Immunity. Nothing in this Agreement shall be deemed a waiver of any protections afforded the Parties pursuant to Colorado law, including, but not limited to, the Colorado Governmental Immunity Act and City Ordinances.

24. No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to any person or entity other than the Parties any right, remedy, or claim under or by reason of this Agreement or any covenants, terms,

conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties.

25. No Personal Liability. No elected official, director, officer, agent or employee of either Party shall be charged personally or held contractually liable by or under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

*[remainder of page intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, the Parties have executed this Intergovernmental Agreement Regarding Cooperative Project Funding (Picadilly Road at Interstate 70) effective as of the Effective Date first set forth above.

**AEROTROPOLIS REGIONAL  
TRANSPORTATION AUTHORITY,**  
a political subdivision and body corporate of the  
State of Colorado formed pursuant to C.R.S. Section 43-4-601

\_\_\_\_\_  
Matthew Hopper, President

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Secretary

**CITY OF AURORA, COLORADO**  
a home rule municipal corporation  
of the Counties of Adams, Arapahoe and Douglas

\_\_\_\_\_  
Mike Coffman, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Kadee Rodriguez, City Clerk

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Michelle Gardner, Sr. Assistant City Attorney

## EXHIBIT A STATEMENT OF WORK

The Project will realign Picadilly Road and construct a new bridge over I-70 as well as a diverging-diamond interchange. The Project also removes an existing partial interchange at Colfax Avenue, and adds signalized intersections and auxiliary lanes within the Project area.

### Preliminary Engineering

- Program Management and Administration Consultant services in support for Design/Build procurement process

### Right of Way Acquisition

- Procurement of ROW and all necessary easements associated with the Project.

### Construction

The following components will be included in the Design-Build contract.

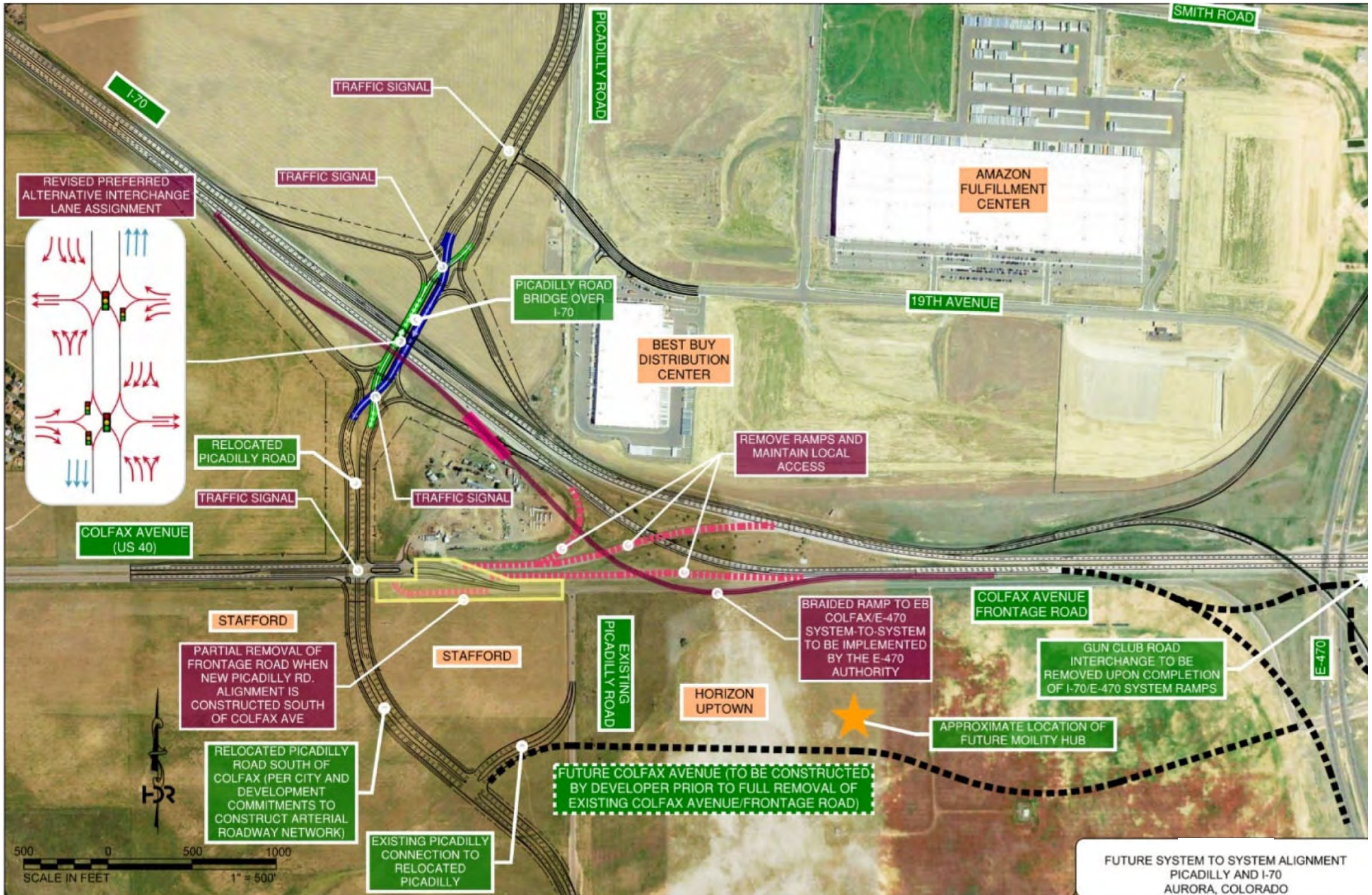
1. Roadways:
  - a. Construct a median barrier with lane widening to the inside of I-70, between I-70 eastbound and I-70 westbound between Tower Road and the proposed Picadilly Interchange.
  - b. Construct auxiliary lanes for I-70 between Tower Road and Picadilly Interchange.
  - c. Construct auxiliary lanes for I-70 between Picadilly Interchange and E-470.
  - d. Construct grade separated Diverging Diamond Interchange (Picadilly Road) over I-70.
  - e. Partially reconstruct the E-470 connector ramp for E-470 Northbound to I-70 Westbound.
  - f. Construct Picadilly Road as a new divided 6-lane principal arterial.
  - g. Reconstruct Colfax Ave (US-40) west of Picadilly Road.
  - h. Construct Colfax Ave between Picadilly Road to I-70 Frontage Road.
  - i. Construct 19th Ave between Picadilly Road to existing 19th Ave.
  - j. Construct I-70 Eastbound roadway and embankment with removal of I-70 eastbound bridge over I-70 Westbound to Colfax Ave Westbound Ramp.
  - k. Construct Roadway appurtenances.
  - l. Remove existing I-70 eastbound bridge over I-70 Westbound to Colfax Ave Westbound Ramp. Add top soil and revegetate the existing alignment

- and associated areas.
- m. Remove existing I-70 Eastbound to Colfax Ave Westbound Ramp concrete, base and roadway appurtenances. Add top soil and revegetate the existing alignment and associated areas.
  - n. Remove existing I-70 Westbound to Colfax Ave Westbound Ramp concrete, base and roadway appurtenances. Add top soil and revegetate the existing alignment and associated areas.
  - o. Remove existing Colfax Ave Eastbound to I-70 Eastbound Ramp concrete, base and roadway appurtenances. Add top soil and revegetate the existing alignment and associated areas.
  - p. Remove existing Picadilly Road. Add top soil and revegetate the existing alignment and associated areas.
  - q. Reconstruction and realignment of eastbound I-70 lanes within project limits to correct existing substandard geometry.
2. Traffic:
    - a. Construct new signalized intersection(s) at Picadilly Road & I-70 Ramp Terminal(s).
    - b. Construct new signalized intersection at Picadilly Road and Colfax Ave (US- 40).
    - c. Construct new signalized intersection at Picadilly Road and 19th Ave.
    - d. Reconstruct intersection at Picadilly Road and Smith Road.
    - e. Construct all signs, striping, and lighting and appurtenances.
    - f. Install fiber optic conduit, cable, pull boxes and appurtenances along Picadilly Road.
  3. Structures:
    - a. Construct one bridge (Picadilly Road over I-70) with retaining walls.
    - b. Construct retaining walls and barriers to vertically separate the inside lane widening between I-70 eastbound and I-70 westbound.
    - c. Construct all sign structures.
  4. Drainage:
    - a. Construct all drainage, storm water protection improvements, Extended Detention Basins and appurtenances.
    - b. Clean any existing drainage structures and pipes that need to be maintained.
  5. Utilities:
    - a. Construct casing pipe around the existing Colorado Interstate Gas Company high-pressure gas line that is under the Picadilly Interchange.

#### Construction Engineering

- Construction Management, Inspection, Material Testing (Quality Assurance) and Consulting Services (Owner Representation)

# Exhibit A



# PROJECT FUNDING



## I-70/Picadilly INTERCHANGE

### SOURCES

Project Sources	Amount	
	Grant App.	Current
Aerotropolis RTA	\$2.4 million	\$20 million
City of Aurora	\$14.6 million	\$46 million
Development	\$14.6 million	\$0 million
BUILD Grant	\$25 million	\$25 million
CDOT Safety Funds	N/A	\$8.5 million
<b>TOTALS</b>	<b>\$56.6 million</b>	<b>\$99.5 million</b>

### USES

Project Phase	Amount	
	Grant App.	Current
Construction	\$38.9 million	<b>\$65.7 million</b>
Design	\$2.4 million	<b>\$4.3 million</b>
Construction Engineering & CDOT Reimbursement	\$5.3 million	<b>\$7.3 million</b>
Contingency	N/A	<b>\$7.0 million</b>
Stipends	N/A	<b>\$0.2 million</b>
Procurement Development & Program Management	N/A	<b>\$3.0 million</b>
ROW Acquisition	\$10 million	<b>\$12 million</b>
<b>TOTALS</b>	<b>\$56.6 million</b>	<b>\$99.5 million</b>

Lawrence Award

10%

Grant application and associated cost estimate developed in 2017 based on conceptual level project design.

Project cost increases beyond standard inflationary rates and project scope refinement due to substantial engineering and construction industry cost escalation and volatility since the beginning of the COVID pandemic.





# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> An Intergovernmental Agreement (IGA) with the Office of Alternate Defense Counsel for the Provision of Conflict Attorney Representation (Resolution)
<b>Item Initiator:</b> Shawn Day, Presiding Judge, Aurora Municipal Court
<b>Staff Source/Legal Source:</b> Shawn Day, Presiding Judge / Elizabeth Cadiz, Chief Public Defender / Angela Garcia, Senior Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 1.0--Assure a safe community for people

### COUNCIL MEETING DATES:

**Study Session:** 12/11/2023

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND THE STATE OF COLORADO OFFICE OF ALTERNATE DEFENSE COUNSEL REGARDING THE PROVISION OF ATTORNEY REPRESENTATION IN CASES WHERE THE MUNICIPAL COURT APPOINTS AN ATTORNEY OTHER THAN THE MUNICIPAL PUBLIC DEFENDER TO REPRESENT AN INDIGENT PERSON AT ANY STAGE OF THE PROCEEDINGS

Shawn Day, Presiding Judge / Angela Garcia, Senior Assistant City Attorney  
Estimated Time: 15 mins

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item as proposed at Study Session
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
Reason for waiver is described in the Item Details field above.

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** Public Safety, Courts & Civil Service

**Policy Committee Date:** 8/10/2023

### Action Taken/Follow-up: *(Check all that apply)*

Recommends Approval

Does Not Recommend Approval

Forwarded Without Recommendation

Minutes Not Available

Minutes Attached

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

N/A

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

Resolution approving the intergovernmental agreement with the office of alternate defense counsel for the provision of conflict attorney representation.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

Revenue Impact

Budgeted Expenditure Impact

Non-Budgeted Expenditure Impact

Workload Impact

No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

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**QUESTIONS FOR COUNCIL**

Does the Committee approve of moving the item forward to regular City Council meeting?

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**LEGAL COMMENTS**

City Council may, by resolution, enter into Intergovernmental Agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter, Art. 10-12). Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such

cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat., Sec. 29-1-203(1)). The Mayor must sign all intergovernmental agreements to which the city is a party. (City Code, Sec. 2-31(b)(2)). (Garcia)

RESOLUTION NO. R2023 - \_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO AND THE STATE OF COLORADO OFFICE OF ALTERNATE DEFENSE COUNSEL REGARDING THE PROVISION OF ATTORNEY REPRESENTATION IN CASES WHERE THE MUNICIPAL COURT APPOINTS AN ATTORNEY OTHER THAN THE MUNICIPAL PUBLIC DEFENDER TO REPRESENT AN INDIGENT PERSON AT ANY STAGE OF THE PROCEEDINGS

WHEREAS, the City of Aurora (“City”) is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX, of the Colorado Constitution and the Charter of the City; and

WHEREAS, the Office of the Alternate Defense Counsel (“OADC”) is an agency of the judicial department of the state government that has been duly created, organized, established and authorized to transact business and exercise its powers pursuant to Sections 21-2-101, *et seq.*, C.R.S., as amended; and

WHEREAS, Section 50-171 of the City Code provides that the Court may, on its own motion or upon the application of the municipal public defender or indigent person, appoint an attorney other than the municipal public defender to represent an indigent person at any stage of the proceedings; and

WHEREAS, Section 21-2-103(c), C.R.S. authorizes the OADC to provide representation to persons charged with violations of municipal code violations pursuant to a contract between a requesting municipality and the OADC; and

WHEREAS, the City desires the OADC to provide such representation in cases where the Court has appointed an attorney other than an attorney in the Aurora Public Defender’s Office (“APDO”) to represent an indigent person at any stage of the proceedings; and

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

WHEREAS, Article 10-12 of the City Charter authorizes the City Council, by resolution, to enter into contracts or agreements with other governmental units or special districts for the joint use of buildings, equipment, or facilities, and for the furnishing or receiving of services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the City of Aurora and the State of Colorado Office of Alternate Defense Counsel regarding the provision of attorney

representation in cases where the Municipal Court appoints an attorney other than the municipal public defender to represent an indigent person at any stage of the proceedings is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the attached agreement in substantially the form presented at this meeting with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*Angela L. Garcia* <sup>PS</sup>  
\_\_\_\_\_  
ANGELA L. GARCIA, Senior Assistant City Attorney

**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**CITY OF AURORA, COLORADO AND**  
**THE OFFICE OF THE ALTERNATE DEFENSE COUNSEL**

**THIS INTERGOVERNMENTAL AGREEMENT**, effective as of the date set forth on the City’s signature page (“Effective Date”) (the “Agreement”) is made by and among the **CITY OF AURORA , COLORADO** (the “City”), a home-rule city and municipal corporation of the State of Colorado, and the **STATE OF COLORADO OFFICE OF THE ALTERNATE DEFENSE COUNSEL** (“OADC”), a body corporate duly organized and existing under the laws of the State of Colorado.

**WITNESSETH:**

**WHEREAS**, the City is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX, of the Colorado Constitution and the Charter of the City; and

**WHEREAS**, the Office of the Alternate Defense Counsel (“OADC”) is an agency of the judicial department of the state government that has been duly created, organized, established and authorized to transact business and exercise its powers pursuant to Sections 21-2-101, *et seq.*, C.R.S., as amended; and

**WHEREAS**, Section 50-171 of the City Code provides that the Court may, on its own motion or upon the application of the municipal public defender or indigent person, appoint an attorney other than the municipal public defender to represent an indigent person at any stage of the proceedings; and that the attorney shall be paid reasonable compensation and reimbursement for expenses necessarily incurred; and

**WHEREAS**, Section 21-2-103(1)(c), C.R.S. authorizes the OADC to provide representation to persons charged with violations of municipal code violations pursuant to a contract between a requesting municipality and the OADC, such as this Agreement; and

**WHEREAS**, the City desires the OADC to provide such representation in cases where the Court has appointed an attorney other than an attorney in the Aurora Public Defender’s Office (“APDO”) to represent an indigent person at any stage of the proceedings; and

**WHEREAS**, the City hereby agrees to be financially responsible for services rendered and expenses incurred by contractors to defend persons charged with such municipal code violations pursuant to the terms of this Agreement as required by Section 21-2-103(1)(c), C.R.S.;and

**WHEREAS**, the OADC hereby agrees to provide such representation.

## **AGREEMENT**

In consideration of the mutual agreements contained in this Agreement, and subject to the terms and conditions stated in this Agreement, the Parties agree as follows:

1. **COORDINATION AND LIAISON:** The OADC shall coordinate primarily for all services under the Agreement with the Chief Public Defender for the APDO (referred to herein as the “Chief Public Defender” or “City Representative” or “City”), or the Chief Public Defender’s Designee. The OADC will also communicate with the Presiding Judge and Designated member of Case Management (a division of Court Administration) when necessary to ensure the availability of OADC contractors and establish the most efficient means of contacting contractors when needed.

2. **WORK TO BE PERFORMED:**

A. Services: The OADC shall diligently and professionally provide representation to eligible indigent persons charged with violations of municipal code violations and traffic offenses where the APDO has identified an ethical conflict of interest preventing it from undertaking or continuing the representation and the Court has appointed conflict counsel at the request of APDO or on its own Motion. The OADC shall faithfully perform the work required under this Agreement in accordance with the standards of care, skill, training, diligence, and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. Any professional services specified under this Agreement which requires the employment of or contracting with licensed or registered personnel shall be performed by licensed or registered personnel. All services provided hereunder are subject to any applicable requirements or limitations contained within the Colorado Rules of Professional Conduct and no provision of this contract shall be interpreted to waive any such requirement or limitation.

B. Conflict of Interest: OADC shall provide the services under this Agreement with the highest ethical standards. If the proposed undertaking creates a conflict of interest or a potential for conflict of interest, as may be determined in the sole discretion of the City Representative, the City may terminate this Agreement immediately. The OADC shall notify the City Representative immediately upon becoming aware of any circumstances that create a conflict of interest or potential for conflict of interest. If during the term of this Agreement, circumstances arise to create a conflict of interest or a potential for conflict of interest, the City may terminate this Agreement immediately.

3. **TERM; RENEWAL:**



A. Term: The term of the Agreement is from January 1, 2023 until December 31, 2023, or until the Maximum Contract Amount specified in Section (4)(A) below is expended and all of the services specified herein have been satisfactorily performed, whichever is sooner, unless this Agreement is terminated, extended as provided in a separate amendment to this Agreement (“Term”), or renewed as described in this Agreement. Subject to the City Representative’s prior written authorization and with adequate funding, the OADC shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the Chief Public Defender.

B. Renewal: Subject to annual budget appropriation, this Agreement may be renewed for a term beginning January 1, 2024, and ending December 1, 2024, and then on an annual basis not to exceed a total of four (4) additional twelve (12) month renewals (including the 2024 term). Any increases in the hourly rate or other adjustments in compensation shall be mutually agreed upon and be reflective of comparable increases pursuant to the Chief Justice Directive (CJD) 04-04. Any further adjustments made in compensation beyond the 2023 term shall be mutually agreed upon by the parties and shall be reflective of an increase in the rate of pay set out by CJD 04-04, Attachment A) from the year preceding the new term (i.e. an increase to the hourly rate per the CJD effective for the first time in 2024, would be reflected in the adjustment for rates under this agreement renewed for a 2025 term). Any future increased rate will not be automatic or applied retroactively. The rate adjustment shall only apply to services upon renewal at the adjusted rate.

**4. COMPENSATION AND PAYMENT:**

A. Maximum Contract Amount: The maximum contract amount to be paid by the City to the OADC for the performance of the work shall in no event exceed the sum EIGHTY THOUSAND DOLLARS (\$80,000.00) unless this Agreement is modified to increase said amount by a duly authorized and written amendment to this Agreement executed by the Parties in the same manner as this Agreement.

B. Payments by the City: The City shall compensate OADC for services in the amount of EIGHTY DOLLARS PER HOUR (\$80.00) with a cap of THREE HUNDRED AND TWENTY DOLLARS (\$320.00) (or 4 hours of work) for citation cases and a cap of ONE THOUSAND DOLLARS (\$1,000.00) (or 12.5 hours) for all other cases in the Aurora municipal trial court, except that where a case proceeds to Jury Trial, the cap shall be increased to ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) (or 18.75 hours). Upon any renewal pursuant to Sec. 3 (b) the totals in this section will also increase to reflect the updated

hourly rate.

C. Payments by OADC Subject to Reimbursement: The City will reimburse at the specified rate for the actual time expended on a specific date. The Jury Trial maximum will only be applied where the Attorney has proceeded to jury trial not for time spent preparing for jury trial nor for jury status or jury call settings. The City Representative will reimburse for mileage at the rate set by Section 24-9-104, C.R.S, but not travel time. The OADC will carefully review all payment requests and be satisfied that the number of hours billed, and expenses charged are appropriate and necessary.

D. Billing: The City agrees to reimburse OADC for payments made to contractors that submit billing for services no later than 45 days from the date of service except that submission for payment of services rendered in this calendar year must be reflected in OADC's final invoice for the year, provided to the City no later than January 10, 2024. Non-compliance may result in nonpayment of requests for reimbursement for payment submitted beyond 45 days of services rendered or within the timeline provided for payment at year's end.

E. If there are extraordinary circumstances involved in the case and the Attorney has performed additional services which have created charges over the allowed maximum, Attorneys may submit a written request to the OADC to exceed the cap. OADC has the discretion to approve such requests for good cause as necessary to provide constitutionally adequate legal services commensurate with those to non-indigents. OADC shall require that the Attorney cite the specific special and extraordinary circumstances that justify fees in excess of the maximum allowed.

F. The City shall at the commencement of the Term of this Agreement make a lump sum payment of TWENTY THOUSAND DOLLARS (\$20,000.00) to OADC to cover the estimated costs for the first quarter. At the exhaustion of the retainer or at the start of each month, OADC will provide invoices requesting payment for the amount necessary to replenish the retainer to TWENTY THOUSAND DOLLARS (\$20,000.00). OADC will provide a final invoice for the calendar year ending December 31, 2023, within 10 days of the following year.

G. Invoices shall reflect the last payment date for which reimbursement is requested and an explanation for any discrepancy between monthly reports and invoice covering the same period of time. Failure to include all payments (or payments and services if final invoice of the year) as of the final payment date may result in nonpayment.

H. Monthly reports submitted by the OADC to the City Representative must fully document services rendered and any expenses incurred to include: (1) total amount paid

(with mileage and over maximum payments break down); (2) total number of cases closed and of those, the number closed after a trial; (3) number of cases opened, or the number of cases that remain pending as of the month's end. Such reports shall be subject to review by the City Representative and the Parties shall promptly confer to resolve any discrepancies in either the statements or invoices.

I. Upon expiration or termination of this Agreement, in the event the City has made a payment in excess of amounts owed to OADC hereunder, any excess amount shall be returned to the City within thirty (30) days of the termination of OADC's work under the contract.

J. Subject to Appropriation; No Multiple Year Obligation: It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Aurora City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The OADC acknowledges that (i) the City does not, by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

K. Amendment: The OADC acknowledges that the City is not obligated to execute an amendment to this Agreement for any further phase of work by the OADC other than the work described herein and that any further phase of work performed by OADC beyond that specifically described or without an amendment to this Agreement is performed at OADC's risk and without authorization under this Agreement.

## 5. TERMINATION:

A. Termination for Convenience of the City: The City Representative, upon giving twenty (20) calendar days written notice (unless a longer period is given), may terminate this Agreement, in whole or part, when it is in the best interest of the City as determined by the City Representative. Any unfinished portion of the work shall be faithfully and timely performed by the OADC to the extent directed by the City Representative (in the City Representative's discretion), and compensation for all such authorized work performed shall be paid to the OADC in accordance with this Agreement.

B. Termination for Cause: The City and the OADC shall each have the right to terminate this Agreement, with cause, upon written notice to the other Party. A termination

shall be deemed “with cause” when it is based on a material breach of the covenants or a substantial default under this Agreement which has not been corrected or resolved to the satisfaction of the non-breaching or non-defaulting party within a reasonable time specified by the non-breaching or non-defaulting party in a written notice to the breaching or defaulting party. In addition, the City shall have the right to terminate this Agreement immediately for cause if the OADC or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the OADC’s business. Nothing herein shall be construed as giving the OADC the right to continue performing work under this Agreement beyond the time when the City Representative notifies the OADC that the OADC’s work has become unsatisfactory to the City Representative and the City Representative is terminating the Agreement, except to the extent that the City Representative specifies certain work to be completed prior to terminating this Agreement.

C. Compensation: If this Agreement is terminated, the OADC shall be compensated for all work satisfactorily completed, and such compensation shall be limited to: (1) the sum of the amounts contained in reports already submitted and approved by the City Representative and (2) the cost of any work which the City Representative authorizes in writing which the City Representative determines is needed to accomplish an orderly termination of the work. Upon termination of this Agreement by the City, the OADC shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

6. **RIGHTS AND REMEDIES NOT WAIVED**: In no event shall any action or inaction, including any payments to the OADC by the APDO, constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of the OADC, and the City’s action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. No assent, expressed or implied, to any breach or default shall be deemed or taken to be a waiver of any other breach or default.

7. **INDEPENDENT CONTRACTOR**: It is understood and agreed that the status of the OADC shall be that of an independent contractor. The OADC is responsible for the

operational management, errors and omissions of the OADC's employees, agents, and subcontractors. Without limiting the foregoing, the OADC understands and acknowledges that the OADC and the OADC's employees, agents and subcontractors: a) are not entitled to workers' compensation benefits through the City; b) are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the OADC or some other entity besides the City; and c) are obligated to pay federal and state taxes on any monies earned pursuant to this Agreement. Furthermore, it is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture between the Parties.

**8. INSURANCE:**

A. At all times during the term of this Agreement, including any renewals or extensions, the OADC shall maintain such Workers' Compensation insurance as required by Statute, and liability insurance, by commercial policy or self-insurance, as is necessary to meet their liabilities under the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S. ("CGIA"). This obligation shall survive the termination of this Agreement.

B. OADC subcontractors performing work under this agreement shall carry Professional Liability Insurance.

C. In agreeing to the foregoing insurance requirements, neither the City nor the OADC intend to waive any provision of the CGIA.

**9. DEFENSE AND INDEMNIFICATION:**

Neither Party shall indemnify the other under this Agreement.

**10. COLORADO GOVERNMENTAL IMMUNITY ACT:** The Parties hereto understand and agree that the City and the OADC are relying upon, and have not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S.

**11. PERMITS, LICENSES, TAXES, CHARGES AND PENALTIES:** The OADC agrees to pay promptly all taxes, excises, license fees, and permit fees of whatever nature applicable to its operations or activities under this Agreement, and to take out and keep current all required licenses or permits (federal, state, or local) required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. The OADC further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations and the performance of this Agreement and not to permit the same to become delinquent. The City

shall not be liable for the payment of taxes, late charges or penalties of any nature. The City is a tax-exempt entity.

**12. EXAMINATION OF RECORDS AND AUDITS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the OADC's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The OADC shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the OADC to make disclosures in violation of state or federal privacy laws.

**13. ASSIGNMENT; SUBCONTRACTING:** The OADC may assign or subcontract its performance obligations under this Agreement with the City Representative's prior written consent. In the event of any subcontracting or assignment: (i) the OADC shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any contractor, subcontractor, or assign.

**14. NO THIRD-PARTY BENEFICIARY:** The Parties understand and expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than the City or the OADC receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**15. NO AUTHORITY TO BIND CITY TO CONTRACTS:** The OADC lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City.

**16. INTEGRATION & AMENDMENTS:** This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification hereto shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other modification shall have any force of effect unless embodied in a written amendment to this Agreement properly executed by the Parties. Any oral representation by any officer or employee of the City at variance with terms and conditions of this Agreement or any written amendment to this Agreement shall not have any force or effect nor bind the City.

**17. SEVERABILITY:** The Parties agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, the validity of the remaining portions or provisions shall not be affected, if the intent of the Parties can be fulfilled.

**18. NOTICES:** All notices required by the terms of the Agreement must be in writing and either hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, or delivered by electronic mail:

By the OADC to:

Chief Public Defender  
Aurora Public Defender's Office  
14999 E. Alameda Pkwy  
Aurora, CO 80012  
ecadiz@auroragov.org

With a copy to: Presiding Judge  
Aurora Municipal Court  
14999 E. Alameda Pkwy  
Aurora, CO 80012  
sday@auroragov.org

By the City to:

Municipal Court Coordinator  
Office of the Alternate Defense Counsel  
1300 Broadway, #330,  
Denver, CO 80203  
muni@coloradoadc.com

All notices are effective upon personal delivery or upon placing in the United States mail or with the courier service.

**19. GOVERNING LAW; COMPLIANCE WITH LAW; VENUE:**

A. Governing Law: This Agreement shall be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter and Revised Municipal Code of Aurora, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The Charter and Revised Municipal Code of Aurora, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

B. Compliance with Law: The OADC shall perform or cause to be performed all services and work under this Agreement in full compliance with all applicable laws, ordinances, codes, rules, regulations and executive orders of the United States of America, the State of Colorado, and the City of Aurora.

C. Venue: Venue for any legal action relating to this Agreement shall lie in the Arapahoe County District Court, Arapahoe County, Colorado.

**20. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the OADC agrees not to refuse to hire, contract with, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and the Contractor further agrees to insert the foregoing provision in all subcontracts hereunder.

**21. PROPRIETARY OR CONFIDENTIAL INFORMATION; OPEN RECORDS:**

A. City Information: The OADC acknowledges and accepts that, in performance of all work under the terms of this Agreement, the OADC may have access to proprietary data or confidential information that may be owned or controlled by the City, and that the disclosure of such proprietary data or confidential information may be damaging to the City or third parties. The OADC agrees that all proprietary data or confidential information provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of the OADC's obligations under this Agreement. The OADC shall exercise the same standard of care to protect such proprietary data and confidential information as a reasonably prudent party would to protect its own proprietary data or confidential information. Proprietary data and confidential information shall include, but not limited to, any materials or information which is designated or marked "Proprietary" or "Confidential" by the City or its



agents, provided to or made available to the OADC by the City subject to a confidentiality agreement or notice of confidentiality, or used by the City under a licensing agreement or other authorization by the owner of the materials or information. Proprietary data and confidential information may be in hardcopy, printed, digital or electronic format.

(1) **Use of Proprietary Data or Confidential Information:** Except as required by law or expressly provided by the terms of this Agreement and subject to written permission of the City Representative, the OADC agrees that the OADC shall not disclose, disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the proprietary data or confidential information, or any part thereof, or any repackaged form of the proprietary data or confidential information, or any part thereof, to any other person, party or entity in any form or media for any purpose other than performing the OADC's obligations under this Agreement. The OADC further acknowledges that by providing this proprietary data or confidential information, the City is not granting to the OADC any right or license to use such data or information except as provided in this Agreement. The OADC agrees that any ideas, concepts, knowledge, computer programs, or data processing techniques developed by the OADC or provided by the City in connection with this Agreement, including any proprietary data or any confidential information, shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The OADC agrees, with respect to the proprietary data and confidential information, that: (1) the Contractor shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the City Representative; (2) the OADC shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data or information; (3) the OADC shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or information or work products incorporating such data or information to the City. The Municipal Appointed Attorney Payment System (MAAPS) developed for the OADC in connection with this Agreement shall be excluded from this subsection.

(2) **Employees and Subcontractors:** The OADC shall inform the OADC's employees and officers of the obligations under this Agreement, and all requirements and obligations of the OADC under this Agreement shall survive the expiration or earlier termination of this Agreement. The OADC shall not disclose proprietary data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

(3) **Disclaimer:** Notwithstanding any other provision of this Agreement,

the City is furnishing proprietary data and confidential information on an “as is” basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the proprietary data or confidential information. The OADC is hereby advised to verify the OADC’s work performed in reliance upon the proprietary data or confidential information. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the OADC agrees to contact the City immediately.

B. Contractor’s Information: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72- 201, *et seq.*, C.R.S., and that in the event of a request to the City for disclosure of such information, the City may advise the OADC of such request in order to give the OADC the opportunity to object to the disclosure of any of the OADC’s proprietary or confidential material. In the event of the filing of a lawsuit to compel a disclosure to which the OADC has objected, the City will tender all such material to the court for judicial determination of the disclosure and the OADC agrees to intervene in such lawsuit to protect and assert the OADC’s claims of privilege and against disclosure of such material or waive the same.

**22. INTELLECTUAL PROPERTY RIGHTS**: The Parties intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the OADC and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media whatsoever (collectively, “Materials”), shall belong to the City. The Contractor shall disclose all such Materials to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a “work made for hire” and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a “work made for hire,” the OADC hereby sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity. The Municipal Appointed Attorney Payment System (MAAPS) developed for the OADC in

connection with this Agreement shall be excluded from this subsection.

**23. SOFTWARE PIRACY PROHIBITION:** The OADC shall perform no work under this Agreement that results in or from the acquisition, operation, maintenance, or use of computer software in violation of United States copyright laws or applicable licensing restrictions. The OADC hereby covenants and agrees that, for the term of this Agreement and any extensions, the OADC has in place appropriate systems and controls to prevent such violations of federal law and licensing restrictions. If the City determines that the OADC is in violation of this provision, the City may exercise any remedy available at law or equity or under this Agreement, including immediate termination of the Agreement and any remedy consistent with United States copyright laws or applicable licensing restrictions. The indemnification provision of this Agreement shall be applicable to any such violations by a subcontractor.

**24. LEGAL AUTHORITY:** The OADC assures and guarantees that the OADC possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. The person or persons signing and executing this Agreement on behalf of the OADC, do hereby warrant and guarantee that he/she or they have been fully authorized by the OADC to execute this Agreement on behalf of the OADC and to validly and legally bind the OADC to all the terms, performances and provisions herein set forth. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the OADC or the person(s) signing the Agreement to enter into this Agreement.

**25. NO CONSTRUCTION AGAINST DRAFTING PARTY:** The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

**26. SURVIVAL OF CERTAIN PROVISIONS:** The Parties understand and agree that all terms and conditions of this Agreement contemplate continued performance or compliance beyond the expiration or earlier termination of this Agreement, shall survive such expiration or termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the OADC's and its subcontractor's obligations for the provision of insurance and/or to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

27. **INUREMENT**: The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

28. **TIME IS OF THE ESSENCE**: The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

29. **PARAGRAPH HEADINGS**: The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

30. **CITY EXECUTION OF AGREEMENT**: This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City of Aurora.

31. **COUNTERPARTS OF THIS AGREEMENT**: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

32. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: The OADC consents to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**(SIGNATURE PAGE TO FOLLOW)**

IN WITNESS WHEREOF, the Parties have approved this Agreement to be effective as of the date first set forth below.

**CITY OF AURORA, COLORADO**

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

Date: \_\_\_\_\_

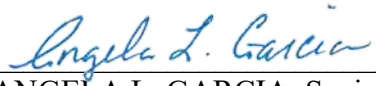
ATTEST:

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

REVIEWED BY:

\_\_\_\_\_  
SHAWN DAY, Presiding Judge

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANGELA L. GARCIA, Senior Assistant City Attorney

**THE OFFICE OF THE ALTERNATE DEFENSE COUNSEL**

By:  \_\_\_\_\_

Name: Lindy Frolich

Title: Director

## SUPREME COURT OF COLORADO

### OFFICE OF THE CHIEF JUSTICE

#### APPOINTMENT OF STATE-FUNDED COUNSEL IN CRIMINAL CASES AND FOR CONTEMPT OF COURT

This policy is adopted to assist the administration of justice with respect to the appointment of counsel in criminal cases pursuant to Titles 16 and 18 and for the appointment of counsel to an indigent person cited for contempt where a jail sentence is contemplated. This policy does not cover appointments made for juvenile delinquency cases pursuant to Title 19, except to the extent necessary to address appointments made prior to November 1, 2014, for which the Judicial Department is responsible for payment of counsel. For appointments of counsel for juvenile delinquency cases after November 1, 2014, see Chief Justice Directive 14-01.

#### **I. CONSTITUTIONAL AND STATUTORY AUTHORITY**

- A. The federal and state constitutions provide that an accused person has the right to be represented by counsel in criminal prosecutions. This constitutional right has been interpreted to mean that counsel will be provided at state expense for indigent persons in all cases in which actual incarceration is a likely penalty or there is a waiver of the right to counsel at the advisement.
- B. State funds are appropriated to the Office of the Public Defender to provide for the representation of indigent persons in criminal cases pursuant to §21-1-103, C.R.S. (2014).
- C. State funds are appropriated to the Office of Alternate Defense Counsel to provide for the representation of indigent persons in criminal cases in which the Public Defender declares a conflict of interest pursuant to §21-2-101, C.R.S. (2014).
- D. Prior to November 1, 2014, Section 19-2-706(2), C.R.S. (2014), provided for the representation of juveniles in delinquency cases in which (1) the parent or legal guardian refused to retain counsel for the juvenile, or (2) the court found such representation was necessary to protect the interest of the juvenile or other parties involved in the case. When such an appointment was necessary and the juvenile did not qualify for representation by the Public Defender or the Office of Alternate Defense Counsel, the Judicial Department was authorized to pay for the costs of counsel and investigator services. House Bill 14-1032 established that, effective November 1, 2014, the Public Defender or OADC if there is a conflict, shall be appointed to represent juveniles in such cases. Reimbursement to the state is authorized for parental refusal, as outlined in §19-2-706(2)(b), C.R.S. and Chief Justice Directive 14-01.
- E. Colorado Rules of Civil Procedure 107 and 407 provide for the appointment of counsel to an indigent person cited for contempt where a jail sentence is contemplated. If the court appoints private counsel to prosecute a contempt action or to represent an indigent party for contempt charges, the Judicial Department will pay for counsel, as there is no statutory authority for the

Public Defender or the Alternate Defense Counsel to represent clients for the sole purpose of addressing contempt charges.

## **II. INDIGENCY DETERMINATION – OUT OF CUSTODY**

- A. All parties requesting court-appointed counsel pursuant to this Chief Justice Directive must be indigent to be represented at state expense, except as otherwise provided in section III. Such person(s) must also be indigent or otherwise qualify for court-appointed counsel as described in Section IV for the court to authorize the payment of certain costs/expenses. Any party requesting court-appointed representation on the basis of indigency must complete Form JDF208, Application for Public Defender, Court-Appointed Counsel or Guardian ad Litem, signed under oath.
- B. An indigent person is one whose financial circumstances prevent the person from having equal access to the legal process (Attachments A, B, and C).
- C. Pursuant to §21-1-103 (3), C.R.S., the initial determination of indigency in criminal cases shall be made by the Public Defender subject to review by the court. Therefore, all persons seeking court-appointed representation in criminal matters shall complete form JDF208 and shall first apply with the Office of the Public Defender. In all matters described in Section IV.C of this Directive, the party must complete form JDF208 and submit it to the court for approval.
- D. In all cases, the court retains jurisdiction to determine whether the person is indigent based on all the information available. Upon receipt of the finding by the Public Defender on the issue of eligibility for representation in accordance with the fiscal standards, the court shall review the person's application for Public Defender, including any requests for exception to the determination of the Public Defender. Based on a review of all information available, the court shall enter an order either granting or denying the person's request for appointment of the public defender. The court may use the judicial district's Collections Investigator(s) to provide a recommendation to the court relative to the above determinations, if additional analysis is needed.
- E. If the court finds the person indigent and appoints counsel at State expense, the court may consider ordering the person to make reimbursement in whole or in part to the State of Colorado pursuant to law using the process described in Section VI. of this Chief Justice Directive.
- F. An attorney or other person appointed by the court on the basis of a person's inability to pay the costs of the appointment shall provide timely notice to the court in the event financial related information is discovered that would reasonably call into question the person's inability to pay such costs. The court shall have the discretion to reassess indigence, and for purposes of possible reimbursement to the state, the provisions of Section VI. of this Chief Justice Directive shall apply. Based upon a reassessment of a party's financial circumstances, the court may terminate a state-paid appointment, require reimbursement to the State of Colorado of all or part of the costs incurred or to be incurred, or continue the appointment in its current pay status.

### **III. INDIGENCY DETERMINATION – IN CUSTODY AND CANNOT POST/IS NOT ALLOWED BAIL**

If a person is in custody and cannot post or is not allowed bail, the Public Defender, or Alternate Defense Counsel if the Public Defender has determined that a conflict exists and has notified ADC that conflict representation is necessary, may automatically elect to represent that person and will notify the court, either verbally or in writing, of the circumstances. The person need not complete a JDF208 until and unless the person is released from custody. If the person is released from custody, then all provisions under Section II., Indigency Determination – Out of Custody, apply.

### **IV. GUIDELINES FOR APPOINTMENT OF COUNSEL**

#### **A. Appointment of Public Defender**

1. Appointments on the Basis of Indigency: To be eligible for representation by the Public Defender (PD), a defendant must be indigent **or eligible for automatic representation**, as defined above and determined by the PD, subject to review by the court. If such person is indigent **or is eligible for automatic representation**, the court shall appoint the PD, except as otherwise provided in paragraph IV.B.
2. Appointments to Assist in Motions Under Rule 35 of the Colorado Rules of Criminal Procedure: An indigent defendant may be entitled to representation by the PD to assist in motions under Rule 35 if the court does not deny the motion under Crim. P. 35(c)(3)(IV). If another attorney represents the defendant and withdraws, the PD may be appointed if the defendant is indigent and there is no conflict with such representation.
3. Appointments for Appeals:
  - a. The court or the PD shall reassess the indigency status of a defendant who requests court-appointed counsel, as described in Section II.A., for purposes of appeal.
  - b. When an indigent person has an Alternate Defense Counsel attorney for the trial of a criminal case, the PD shall be appointed to represent the defendant on appeal unless the court determines that the PD has a conflict of interest.

#### **B. Appointment of Alternate Defense Counsel**

The Office of Alternate Defense Counsel (OADC) shall maintain a list of qualified attorneys for use by the courts in making appointments. Upon appointment of an Alternate Defense Counsel attorney, the clerk shall notify the OADC's designee. No more than one attorney may be appointed as counsel for an indigent person except in specific exceptional circumstances. Accordingly, upon specific written request by counsel for appointment of an additional attorney to assist in the defense of an indigent person, the OADC may approve appointment of an additional attorney for good cause shown. Such requests should be made in writing and directed to the OADC. Alternate Defense Counsel shall be appointed under the following circumstances:



1. Conflict-of-Interest Appointments: The PD shall file a motion or otherwise notify the court to withdraw in all cases in which a conflict of interest exists. The court shall appoint an Alternate Defense Counsel attorney to represent indigent persons in cases in which the court determines that the PD has a conflict of interest and removes the PD from the case. The OADC is responsible by statute to handle all PD conflict cases. Therefore, the OADC shall establish policies and procedures to cover instances when Alternate Defense Counsel has a conflict.
2. Appointments To Assist in Motions Under Rule 35 of the Colorado Rules of Criminal Procedure: An indigent defendant may be entitled to conflict-free counsel to assist in motions under Rule 35 if the court does not deny the motion under Crim. P. 35(c)(3)(IV) and if the PD notifies the court that a conflict of interest exists. The provisions of IV.B.1. above shall be followed in appointing an Alternate Defense Counsel attorney.
3. Appointments for Appeals: If the court determines that the PD has a conflict of interest, it shall set forth in a written order the reason for the conflict of interest and the court shall appoint an Alternate Defense Counsel attorney to represent the defendant.

C. Appointment of Other Counsel

1. The Clerk of Court or the Court Executive shall maintain a list of qualified private attorneys from which appointments shall be made under this section. Private counsel appointed under the following circumstances will be paid by the Judicial Department as established in this directive:
  - a. Appointments of Advisory Counsel: There is no constitutional right to the appointment of advisory counsel to assist a *pro se* defendant. However, pursuant to case law, the court may appoint private advisory counsel either 1) at the request of an indigent *pro se* defendant, or 2) over the objections of an indigent *pro se* defendant to ensure orderly proceedings and to provide assistance to the defendant. If the court appoints private advisory counsel for an indigent *pro se* defendant in a criminal case, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to advise *pro se* defendants.
  - b. Appointments of Contempt Counsel: Private counsel may be appointed as a special prosecutor or as counsel for an indigent person facing contempt charges when punitive sanctions may be imposed, in accordance with Rule 107(d) and 407(d) of the Colorado Rules of Civil Procedure. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed at the discretion of the court.
  - c. Appointments of Counsel for Grand Jury Witnesses: A witness subpoenaed to appear and testify before a grand jury is entitled to assistance of counsel pursuant to §16-5-204, C.R.S. (2014). For any person financially unable to obtain adequate assistance, counsel may be appointed at state expense. Pursuant to case law, no

attorney who provides counsel in the grand jury room may represent more than one witness in a single investigation without grand jury permission. If the court appoints counsel for an indigent witness before a grand jury, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent grand jury witnesses.

- d. Appointments of Counsel for Witnesses: An indigent witness subpoenaed to appear and testify in a court hearing may be appointed counsel if the witness requests counsel and the judge determines the appointment of counsel is necessary to assist the witness in asserting his or her privilege against self-incrimination. If the court appoints counsel for an indigent witness for this purpose, the Judicial Department will pay for counsel, as there is no statutory authority for the Public Defender or the Alternate Defense Counsel to represent a witness.
2. For appointments under this section, the appointing judge or magistrate shall, to the extent practical and subject to attorney-client privilege, monitor the actions of the appointee to ensure compliance with the duties and scope specified in the order of appointment.
  3. Attorneys appointed under this section shall notify the State Court Administrator, in writing, within five (5) days of any malpractice suit or grievance brought against them.
  4. Appointees shall maintain adequate professional liability insurance for all work performed. In addition, appointees shall notify the State Court Administrator, in writing, within five (5) days if they cease to be covered by said liability insurance and shall not accept court appointments until coverage is reinstated.

## V. GUIDELINES FOR PAYMENT

### A. Public Defender Costs

The Public Defender's Office has attorneys on staff (Deputy Public Defenders) to accept appointments. Court costs and other expenses incurred by the Public Defender shall be billed to the Public Defender's Office in accordance with that office's policies and procedures.

### B. Office of Alternate Defense Counsel Costs

All Contractor fees earned, and expenses incurred shall be filed with the OADC in accordance with that office's policies and procedures. A schedule of maximum hourly rates for counsel and other persons necessary to provide legal services commensurate with those available to persons who are not indigent and maximum total fees for OADC state-funded counsel is shown in Attachment D (1).

### C. Other Court-Appointee's Costs

The fees and costs associated with appointments described under section IV. C. shall be paid by the Judicial Department as follows:

1. Fees and Expenses: Appointments may be made by the courts on a non-contract hourly fee basis or contract basis as set forth by the State Court Administrator's Office. A schedule of maximum hourly rates and maximum total fees for state-funded counsel and investigators is shown in Attachment D (2). Upon appointment of counsel or other appointee, court staff shall enter the appointment in the ICON/Eclipse computer system and complete the appointment on the CAC system for payment and tracking purposes. Claims for payment on hourly appointments shall be entered in the Department's **Internet-based payment system (CACs)**; or, if the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, claims for payment shall be filed with the Court Executive in the respective judicial district on the Request and Authorization for Payment of Fees (form JDF207). Claims for payment on flat-fee, contract appointments shall be entered in the Department's Internet-based payment system (CACs); or, if the State Court Administrator's Office has granted the appointee an exception to the requirement to invoice using CACS, such claims for payment shall be filed with the State Court Administrator's Office using the process and format required by that office. All requests for hourly payment must be in compliance with Guidelines for Payment of Court-Appointed Counsel and Investigators Paid by the Judicial Department for Itemized Fees and Expenses on an Hourly Basis (Attachment E) and shall follow the Court-Appointed Counsel and Investigators Procedures for Payment of Fees and Expenses (Attachment F). All hourly payment requests shall be reviewed by the Court Executive or his/her designee to ensure that all charges are appropriate and in compliance with this directive and applicable fiscal policies and procedures, before authorizing the request. The Office of the State Court Administrator may review, verify, and revise, when appropriate, authorizations for payment. All incomplete or erroneous claims will be returned to the attorney or investigator with an explanation concerning the issue(s) identified.
2. Court Costs, Expert Witness Fees, and Related Expenses: Costs incurred by counsel shall be pre-approved, billed to and paid by the appointing court. Court costs include such items as: expert and standard witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. Payment of all court costs shall be in accordance with applicable statutes, Chief Justice Directives, and other policies and procedures of the Judicial Department. Appropriate travel receipts must accompany out-of-state investigation travel expenses incurred by the appointee.
3. Investigator Appointments: If a court-appointed attorney paid by the Judicial Department requires the services of an investigator, he or she shall submit a motion to the court requesting authority to hire an investigator. The court shall authorize such appointments as the judge or magistrate deems necessary, and shall issue an order authorizing the amount of investigator fees and expenses that may be incurred, not to exceed the maximum fees set forth in Attachment D (2). The Judicial Department shall pay for investigator services under these circumstances.
4. Online Appointee Billing: Appointees paid by the Judicial Department shall invoice the Department using the Department's Internet-based system (CACs) according to the policies and procedures set forth by the State Court Administrator's Office. An appointee may request an exception to this requirement by contacting the State Court Administrator's Office. In the request, the appointee shall describe the extenuating circumstances

preventing the use of CACS for invoicing. The person overseeing the Court-Appointed Counsel system or his/her designee shall review such requests and shall have final decision authority concerning the granting or denial of the request. Failure of an appointee to learn or avail him/herself of training on the use of CACS is not sufficient cause to warrant an exception.

5. To maintain the security and integrity of CACS, appointees shall immediately notify the State Court Administrator's Office, in writing, of any changes in appointee's staffing or practice that may require cancellation or other changes in the CACS login authority or credentials of appointee or appointee's staff.
6. Failure of appointee to appropriately use CACS shall be sufficient grounds for denial of payment and may result in removal from consideration for future appointments.

**D. Court Costs, Expert Witness Fees and Investigator Fees of an Indigent Party who is Not Appointed Counsel**

1. In certain circumstances, a defendant's court costs, expert witness fees, and/or investigator fees may be paid by the Judicial Department even though the defendant is not represented by state-funded counsel (i.e., Public Defender; Alternate Defense Counsel; Judicial-paid counsel). Payment by the local court is appropriate if any of the following statements apply:
  - a) The defendant is indigent and proceeding *pro se*;
  - b) The defendant is indigent and receiving *pro bono*, private counsel;
  - c) The defendant is receiving private counsel but becomes indigent during the course of the case, and the court has determined that the defendant lacks sufficient funds to pay for court costs, and that it would be too disruptive to the proceedings to assign the Public Defender or Alternate Defense Counsel to the case.
2. Court costs include such items as: expert and standard witness fees and expenses, service of process, language interpreter fees, mental health examinations, transcripts, and discovery costs. An investigator appointed by the court under this section shall be paid in accordance with the rates and maximum fees established in Attachment D (2). A motion requesting authorization to hire an investigator, to pay court costs, or for expert witness fees shall be submitted to the court. The Court shall authorize such appointments or payments as the judge or magistrate deems necessary and shall issue an order authorizing the amount of the costs, fees and expenses that may be incurred under this section. For maximum rates for payment of expert witnesses, see CJD 12-03, as amended.

- E. In instances in which fees for activity such as travel time, waiting time, and mileage expenses were incurred simultaneously for more than one court appointment, appointees shall apportion the fees or expenses across cases, as applicable (for example, traveling to/from court would be billed 50% on the client A appointment and 50% on the client B appointment if the appointee made one trip to cover both clients' hearings).

**VI. REIMBURSEMENT TO THE STATE**

- A. If the court determines, at any time before, during the course of the appointment (at the court's discretion if questions concerning indigence arise), or after the appointment of state-funded counsel, that the person has the ability to pay all or a part of the expenses for representation including related ancillary costs, the court shall enter a written order that the person reimburse all or a part of said expenses and inform the responsible party of this obligation. Such order shall constitute a final judgment including costs of collection and may be collected by the state in any manner authorized by law. The court's financial review concerning ability to pay counsel fees and costs may be accomplished with the use of the judicial district's Collections Investigator. If the defendant is placed on probation, the court may require payment for the costs of representation as one of the conditions of probation.
- B. Collection of fees and costs related to court-appointed representation may be referred to the Collections Investigator or a private collector that has an agreement for such collection services with the State Court Administrator's Office.
- C. Costs for representation provided may be assessed against the responsible party(ies) at the fixed hourly rate for state-funded private counsel for the number of hours reported to the court, or at a flat fee rate established by the Public Defender or Alternate Defense Counsel. Other costs incurred for the purposes of prosecution and representation of the case may also be assessed including, for example, costs for transcripts, witness fees and expenses, and costs for service of process. In addition, the responsible party(ies) may be required to pay costs of collection. Costs incurred for accommodations required under the Americans with Disabilities Act, such as hearing interpreter fees, may not be assessed.

## **VII. COMPLAINTS**

- A. All written complaints and documentation of verbal complaints regarding the performance of any state-paid counsel shall be submitted to the Court Executive.
- B. All complaints shall be referred by the Court Executive to the appropriate agency or person. Public Defender complaints shall be submitted to the Public Defender's Office. Complaints against an Alternate Defense Counsel attorney shall be submitted to the Alternate Defense Counsel Office. The Court Executive will forward all other complaints to the presiding judge or, if appropriate, the Chief Judge of the district unless a conflict exists due to the judge's involvement in a pending case. If a conflict exists, the Court Executive will forward the complaint to another judge designated for that purpose.
- C. If the complaint involves an attorney and the reviewing judge or Court Executive determines that the person may have violated the Colorado Rules of Professional Conduct, the information shall be filed with the Colorado Supreme Court Office of Attorney Regulation Counsel. The Regulation Counsel shall advise the reporting judge or Court Executive and the State Court Administrator of the final outcome of the investigation.
- D. Copies of all written complaints and documentation of verbal complaints regarding state-paid counsel shall be forwarded by the Court Executive to the State Court Administrator's Office. The State Court Administrator may investigate a complaint and take action he/she believes is

necessary to resolve any concerns or issues raised by the complaint. Such action may include, but is not limited to, terminating the contract with the attorney.

## **VIII. SANCTIONS**

- A. All contracts with the Judicial Department for appointments addressed in this Chief Justice Directive shall include a provision requiring compliance with this Chief Justice Directive. Failure to comply with this Directive may result in termination of any associated contract and/or removal from the appointment list.
- B. Judges and Magistrates shall notify appointees that acceptance of the appointment requires compliance with this Directive, and that failure to comply may result in termination of the current appointment and/or removal from the appointment list.

CJD 04-04 is amended and adopted effective July 1, 2023.

Done at Denver, Colorado this 29<sup>th</sup> day of June, 2023.

/s/

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Brian D. Boatright, Chief Justice

Applicant Name \_\_\_\_\_ Court \_\_\_\_\_

Case Number \_\_\_\_\_ Case Name \_\_\_\_\_

### **FISCAL STANDARDS - ELIGIBILITY SCORING INSTRUMENT**

Use information from Form JDF208 and information provided by applicant during screening interview. Circle the points in the category that applies and transfer to the "Points" column. Total at end.

Factor				Points
<b>1. Income Guidelines</b> Gross income from all members of the household who contribute monetarily to the common support of the household. Income categories include: wages, including tips, salaries, commissions, payments received as an independent contractor for labor or services, bonuses, dividends, severance pay, pensions, retirement benefits, royalties, interest/investment earnings, trust income, annuities, capital gains, Social Security Disability (SSD), Social Security Supplemental Income (SSI), Workman's Compensation Benefits, Unemployment Benefits, and alimony.  Gross income shall not include income from TANF payments, food stamps, subsidized housing assistance, and veteran's benefits earned from a disability, child support payments or other public assistance programs.  NOTE: Income from roommates should not be considered if such income is not commingled in accounts or otherwise combined with the Applicant's income in a fashion which would allow the applicant proprietary rights to the roommate's income.)	At or below guidelines	Up to 10% above guidelines	11% to 75% above guidelines (Not eligible if income is more than 75% above guidelines.)	
	<b>150</b>	<b>100</b>	<b>0</b>	
<b>2. Expenses vs. Income</b> (Expenses for nonessential items such as cable television, club memberships, entertainment, dining out, alcohol, cigarettes, etc., shall <u>not</u> be included.)	Monthly expenses exceed income by over \$100	Monthly expenses are within \$100 of income	Monthly income exceeds expenses by over \$100	
	<b>50</b>	<b>25</b>	<b>0</b>	
<b>3. Charge (most severe) vs. Assets which could be used to pay defense costs</b> (Assets to include cash on hand or in accounts, stocks, bonds, certificates of deposit, equity, and personal property or investments which could readily be converted into cash without jeopardizing the applicant's ability to maintain home and employment.)	Class 1 - Class 3 Felony or Habitual Offender related	Class 4 - Class 6 Felony	Class 1 - Class 3 Misdemeanor or jailable Traffic	
	Assets \$0 - \$750	<b>150</b>	<b>125</b>	<b>50</b>
	Assets \$751 - \$1,500	<b>125</b>	<b>100</b>	<b>25</b>
	Assets \$1,501 - \$2,500	<b>100</b>	<b>75</b>	<b>0</b>
	Assets \$2,501 - \$5,000	<b>75</b>	<b>50</b>	<b>0</b>
	Assets \$5,001 - \$7,500	<b>50</b>	<b>25</b>	<b>0</b>
	Assets \$7,501 - \$10,000	<b>25</b>	<b>0</b>	<b>0</b>
	Assets over \$10,000	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL POINTS</b>				
<b>150 or greater</b>	<b>Less than 150</b>			
<input type="checkbox"/> Indigent - Eligible for Public Defender (Note: Reimbursement of costs of representation may be ordered by the court pursuant to Section 21-1-106, C.R.S.)	<input type="checkbox"/> Not Eligible for State-Funded Counsel			

EXCEPTION REQUESTED TO [ ALLOW / DISALLOW ] APPOINTMENT OF [ PUBLIC DEFENDER / ALTERNATE DEFENSE COUNSEL (if PD conflict) ] NOTWITHSTANDING THE ABOVE SCORE. (Documentation justifying request is attached.)

Evaluated by \_\_\_\_\_  
Print/Type Name
Evaluator Signature
Date

**INCOME ELIGIBILITY GUIDELINES (amended January 2023)**

Family Size	Annual Poverty	Monthly Poverty	Monthly Income*	Monthly Income plus 10%	Monthly Income plus 75%	Yearly Income*	Yearly Income plus 10%	Yearly Income plus 75%
1	\$ 14,580	\$ 1,215	\$ 1,519	\$ 1,671	\$ 2,658	\$ 18,225	\$ 20,048	\$ 31,894
2	\$ 19,720	\$ 1,643	\$ 2,054	\$ 2,260	\$ 3,595	\$ 24,650	\$ 27,115	\$ 43,138
3	\$ 24,860	\$ 2,072	\$ 2,590	\$ 2,849	\$ 4,532	\$ 31,075	\$ 34,183	\$ 54,381
4	\$ 30,000	\$ 2,500	\$ 3,125	\$ 3,438	\$ 5,469	\$ 37,500	\$ 41,250	\$ 65,625
5	\$ 35,140	\$ 2,928	\$ 3,660	\$ 4,026	\$ 6,406	\$ 43,925	\$ 48,318	\$ 76,869
6	\$ 40,280	\$ 3,357	\$ 4,196	\$ 4,615	\$ 7,343	\$ 50,350	\$ 55,385	\$ 88,113
7	\$ 45,420	\$ 3,785	\$ 4,731	\$ 5,204	\$ 8,280	\$ 56,775	\$ 62,453	\$ 99,356
8	\$ 50,560	\$ 4,213	\$ 5,267	\$ 5,793	\$ 9,217	\$ 63,200	\$ 69,520	\$ 110,600

\* 125% of poverty level as determined by the Department of Health and Human Services.

\*For family units with more than eight members, add \$ 536 per month to the "monthly income" or \$ 6,432 per year to "yearly income" for each additional family member.

Source: Federal Register (88 FR 3424, 01/19/2023)



**FISCAL STANDARDS: PROCEDURES FOR THE DETERMINATION OF  
ELIGIBILITY FOR COURT-APPOINTED COUNSEL ON THE BASIS OF  
INDIGENCY**

A determination of indigency is necessary for certain appointments addressed in Chief Justice Directive 04-04. Any defendant in a criminal case or a person involved in matters described under IV.C requesting court-appointed counsel on the basis of indigency must apply for counsel as described below. The Public Defender and court staff will determine the applicant's eligibility for appointment of counsel in accordance with the following procedures:

- In Criminal cases, the defendant shall apply for the Public Defender by completing the Application for Court-Appointed Counsel, form JDF208 (Judicial Department Form).
- If the defendant is in custody and cannot post or is not allowed bail, the Public Defender may automatically elect to represent the defendant, and will notify the court either verbally or in writing of the circumstances.
- If the person's income is at or below the income eligibility guidelines and he or she has no assets, as determined on form JDF208, the Public Defender or other counsel shall be appointed.
- If the person's income is more than 75 percent above the income eligibility guidelines, they are not eligible for State-paid counsel. In criminal matters, the Public Defender will note that the defendant is ineligible for court-appointed counsel, and will submit the form JDF208 to the court to demonstrate ineligibility.
- If eligibility or ineligibility cannot be determined as described above, the eligibility-scoring instrument (Attachment A, CJD 04-04) will be completed, using information obtained on form JDF208. The form is designed to use income and expenses to determine basic eligibility, with an added factor for assets available to pay for an attorney. The points assigned in the "asset" category take into account both the dollar value of the assets and the class type of charges against the defendant. This is to address variations in the types of expenses that might be incurred due to the nature of the charges.
- The total score will determine whether the person will be represented at state expense, or whether the person is not eligible for state-paid representation on the basis of indigency. The Public Defender or defendant may request an exception to the eligibility determination based on the score and may submit documentation of the reasons for the exception to the court, which then has the opportunity to make an appointment decision based on all of the information.

## ALTERNATE DEFENSE COUNSEL MAXIMUM HOURLY RATES <sup>1</sup>

<u>ADC Fees</u>	<u>Hourly Rate</u>	<u>Effective Date*</u>
<b>ATTORNEY RATE</b>		
Type A Felonies	\$105.00 per hour	July 1, 2023
Type B Felonies	\$100.00 per hour	July 1, 2023
Juvenile Felonies	\$100.00 per hour	July 1, 2023
Misdemeanor & Traffic (Adult & Juvenile)	\$95.00 per hour	July 1, 2023
Travel (regardless of type of case)	\$95.00 per hour	July 1, 2023

The OADC has the right to contract with attorneys at rates less than the rates outlined above. Additionally, the OADC can pay more than the rates outlined above if language skills outside of English are needed and used on a case.

### NON-ATTORNEY RATES

Authorized Investigator	\$55.00 per hour	July 1, 2023
Authorized Paralegal/Legal Assistant	\$42.00 per hour	July 1, 2023
Authorized Forensic Social Worker (FSW)/ Forensic Clinical Advocate (FCA)	\$55.00 - \$72.00 per hour	July 1, 2023
Travel (regardless of hourly rate for FSW/FCA)	\$55.00	July 1, 2023

The OADC has the right to contract with other necessary individuals at rates other than those outlined above based on level of expertise and experience, as well as if language skills outside of English are needed and used on a case.

Mileage at rate defined by §24-9-104 C.R.S.                      Reimbursement paid per OADC policy.

\* For work performed on or after this date (July 1, 2023)

### MAXIMUM TOTAL FEES PER APPOINTMENT

<u>Appointment Type</u>	<i>Without Trial</i>	<i>Trial</i>
Class 1 Felonies	\$ 18,880	\$ 37,760
Class 2 Felonies	\$ 8,260	\$ 16,520
Class 3,4,5, & 6 Felonies	\$ 5,310	\$ 10,620
DF 1 Felonies	\$ 8,260	\$ 16,520
DF 2, 3, & 4 Felonies	\$ 5,310	\$ 10,620
Misdemeanor, Traffic & Petty Offenses	\$ 2,360	\$ 4,720
Juvenile Cases	\$ 4,130	\$ 8,260

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<sup>1</sup> Rates may vary pursuant to Chief Justice Directive or OADC Order. The appointee should contact the Office of the Alternate Defense Counsel or visit the web site at [www.coloradoadc.org](http://www.coloradoadc.org) if there is a question concerning the current authorized rate.

<b>Appeals / Post Conviction 35(c)</b>	<b><i>Without Trial</i></b>	<b><i>Trial</i></b>
Class 1 Felony	\$ 5,310	\$ 10,620
Class 2, 3 & 4 Felonies	\$ 4,720	\$ 9,440
Class 5 & 6 Felonies	\$ 3,540	\$ 7,080
Class 1 & 2 Drug Felonies	\$ 4,720	\$ 9,440
Class 3 & 4 Drug Felonies	\$ 3,540	\$ 7,080
Misdemeanor	\$ 2,360	\$ 4,720
Juvenile	\$ 2,950	\$ 5,900

The maximum fees for those other persons necessary to provide legal services commensurate with those available to persons who are not indigent ~~maximum fees~~ are limited to what was previously authorized by the OADC.

## JUDICIAL PAID APPOINTMENTS

### MAXIMUM HOURLY RATES<sup>1</sup>

<u>All Case Types</u>	<u>In-Court and Out-of-Court</u>	<u>Effective Date*</u>
Court-Appointed Counsel Fee	\$100.00 per hour	July 1, 2023
Authorized Investigator	\$55.00 per hour	July 1, 2023
Paralegal / Legal Assistant Time	\$42.00 per hour	July 1, 2023

\* For work performed on or after this date

### MAXIMUM TOTAL FEES PER APPOINTMENT

<u>Appointment Type</u>	<u>With Trial / Without Trial</u>	<u>Effective Date</u>
Class 1 felonies & unclassified felonies where the maximum possible penalty is life or more than 51 years	\$ 37,430/18,760	July 1, 2023
Class 2 felonies & unclassified felonies where the maximum possible penalty is 41 through 50 years	\$ 18,760/ 9,925	July 1, 2023
Class 3, 4, 5 and 6 felonies and unclassified felonies where the maximum possible penalty is from 1 to 40 years	\$ 13,240/6,640	July 1, 2023
Misdemeanors and petty offenses	\$ 3,315/ 2,245	July 1, 2023
Appeal	\$ 13,240	July 1, 2023
Contempt and Witness July 1, 2023	\$ 2,245	

- Billable time for appeals begins on the date of appointment and is for the appeal portion of the case only
- Investigator maximum fee allowed is calculated from the preceding chart using the case classification and the “without trial” maximum, exclusive of expenses.

<sup>1</sup>Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator’s Office or visit the web site at [www.courts.state.co.us](http://www.courts.state.co.us) if there is a question concerning the current authorized rate.

## **GUIDELINES FOR ITEMIZED HOURLY PAYMENT: JUDICIAL PAID APPOINTMENTS ONLY**

### **COURT-APPOINTED COUNSEL AND INVESTIGATORS**

- A) Claims for payment on an hourly basis shall be submitted using the Judicial Department's online CAC System (if the appointee is authorized to use this system) or submitted to the appointing court on form JDF207 ("Colorado Judicial Department Request and Authorization For Payment Of Fees") including attachments, and shall be in compliance with these guidelines. For appellate counsel only, claims for payment shall be submitted directly to the Court of Appeals. The claims and attachments shall conform to the Procedures for Payment of Fees and Expenses (Attachment F, this CJD). In accordance with this CJD and all other applicable Department policies and procedures, and upon review and approval by the appointing court, the request for payment will be sent to the State Court Administrator's Office (SCAO) for processing. The SCAO may review, verify, and revise, when appropriate, such authorized requests for payment.
- B) A schedule of maximum hourly rates for court-appointed counsel is established by the Supreme Court in Attachment D (2) and/or by Chief Justice Order. **No payment shall be authorized for hourly rates in excess of the Chief Justice Directive or Order. The maximum total fee that may be paid to court-appointed private counsel for representation on a case is established in Attachment D (2). This maximum includes appointee fees (both contract flat fees plus hourly, as applicable), allowable incidental expenses, paralegal, legal assistant, and law clerk time. To find the allowed maximum total fee for investigators, exclusive of expenses, use the case classification type and the "without trial" maximum from the chart in Attachment D(2).**
1. If there are unusual circumstances involved in the case and the appointee determines that additional work must be completed that will create fee charges over the maximum allowed, pre-approval for fees in excess is to be obtained by submitting a Motion to Exceed the Maximum to the presiding judge/magistrate (while there may be exceptions in which pre-approval is not possible before additional work is performed, seeking pre-approval should be the norm.). If satisfied that the excess fees are warranted and necessary, the presiding judge/magistrate should approve such motion. The Court Executive (or designee) should deny further payment unless accompanied by a Motion to Exceed the Maximum and an order granting the Motion by the presiding judge or magistrate.
  2. The Motion to Exceed the Maximum must cite the specific special and extraordinary circumstances that justify fees in excess. The judge or magistrate, in his or her discretion, may grant approval with an Order for Fees in Excess which provides a maximum up to 150% of the established maximum as outlined in Attachment D(2) of this Chief Justice Directive. A subsequent Motion to Exceed Maximum must be submitted for the same appointment if total fees are expected to further exceed the maximum established by the judge or magistrate.
- C) **All court appointees and investigators must submit invoices using CACS, or a JDF 207, as applicable, to the court within six months of the earliest date of billed activity.** Any court appointee or investigator desiring to request an exception to the 6-month rule based on

unusual circumstances shall make such request in writing to the State Court Administrator's Office. The decision concerning payment shall be final. Before an exception will be considered, the request must detail the extraordinary circumstances concerning a bill or portion of a bill wherein the activity does not fall within the six-month rule.

- D) The Court Executive or his/her designee will carefully review all hourly payment requests submitted for approval. To assist in this review, attorneys and investigators must submit a detailed itemization of in-court and out-of-court hours with each request for payment as outlined in Procedures for Payment of Fees and Expenses, Attachment F. Authorization for payment is not automatic, and the Court Executive (or designee) must be satisfied that the number of hours billed and expenses charged are appropriate and necessary for the complexity of the issues involved. If there are questions concerning the reasonableness of the bill, the appropriate judge or magistrate will be consulted. If reimbursement to the state is to be ordered and such order is not already entered, the Court Executive or his/her designee shall notify the appropriate judge.
- E) Requests by appointees for reimbursement of expenses must include itemized statements and accompany the request for payment. In addition, such requests must comply with Maximum Hourly Rates/Maximum Fees Per Appointment as set forth in Attachment D (2). When practical, a paralegal or legal assistant should be used for tasks that require legal expertise but can be done more cost-effectively by an assistant, such as drafting court motions or performing some legal research. The billable hourly rate for a paralegal or legal assistant time is found in Attachment D(2). The Judicial Department does not pay for the time of administrative support staff. Therefore, charges for time spent on administrative activities, such as setting up files, typing, copying discovery or other items, faxing documents, making deliveries, preparing payment requests, and mailing letters are not reimbursable costs. Attorneys are expected to have sufficient administrative support for these activities.
1. Certain court costs are paid individually by the appointing court (not SCAO) with prior court approval. The appointing court pays court costs incurred by counsel. Counsel or investigators should submit the bills for items listed below directly to the local court and should not include these costs for reimbursement in the CAC system, or on the Request for Payment form (JDF207), if applicable.

**Costs Paid Locally by the Individual Court**

- Cost of subpoenas;
  - Fees and expenses of witnesses;
  - Service of process;
  - Language interpreters;
  - Mental Health examinations/evaluations;
  - Transcripts;
  - Discovery Costs (including: LexisNexis research charges, medical records, etc.)
2. Court-appointed counsel and investigators may request reimbursement for certain reasonable out-of-pocket expenses that are incurred on behalf of their clients. The following expenses may be claimed via the CAC system, or on JDF207, as applicable.

**Other Allowable Expenses**

- 25 Copy charges at the rate of \$0.25 per page (specify the number of copies made);
- Mileage at the rate defined by §24-9-104 C.R.S. (the actual number of miles must be specified for each trip);
- Long-distance telephone calls at cost (if total billing exceeds \$50, it must include a copy of the telephone bill with the following information highlighted: date, phone number, and charges);
- Postage at cost (regular 1<sup>st</sup> class mail charges);
- Reimbursement for delivery and express mail charges are only reimbursable for a case on appeal. A receipt or invoice for these charges must be attached to the order for payment;
- Requests for payment of overnight travel or out-of-state travel require prior authorization by the court and must be in accordance with state travel regulations as described in the Travel section of the Colorado Judicial Department's Fiscal Policies and Procedures manual. Out-of-state travel expenses incurred by the appointee shall be submitted to the court using the online CAC system. All appropriate copies of travel receipts shall be provided directly to court staff.

3. The following items are not authorized for payment or reimbursement.

**Non-Allowable Expenses**

- Phone calls when no contact is made (i.e., no answer, client not available or message left to call back, etc.);
  - Fax charges;
  - Parking Fees;
  - Items purchased for indigent (or other) persons represented which includes meals, books, clothing, and other personal items;
  - Administrative activities (as previously discussed);
  - Electronic filing fees for which state funded counsel appointments are exempt;
  - Any other cost or expense not authorized under Colorado law or Chief Justice Directive for payment by the state or reimbursement to counsel or other party.
- F) In any case in which a payment has been made to the attorney by a party who is later determined to be indigent, the state will reimburse the attorney for the total number of hours expended on the case, less any payments received from the party for fees incurred prior to the determination of indigence. The payment calculation is at the allowed Chief Justice Directive and/or Chief Justice Order hourly rate applicable to when the activity occurred.
- G) Attorneys shall maintain records of all work performed relating to court appointments and make all such records available to the Judicial Branch for inspection, audit, and evaluation in such form and manner as the Branch in its discretion may require, subject to attorney/client privilege.
- H) The Judicial Department will review and respond promptly to any question or dispute concerning a bill received, submitted, or paid. However, due to research time and record retention limitations, there is a time restriction of two years for billing questions and disputes.

The two-year restriction starts from the activity date (or date of service) that is in question. For prompt resolution concerning questions or disputes concerning hourly or contract payment requests, all questions and disputes must be directed to the local court or State Court Administrator's Office immediately when issues arise.



## JUDICIAL PAID APPOINTMENTS

### \* PROCEDURES FOR PAYMENT OF FEES AND EXPENSES \*

#### GENERAL INFORMATION

These procedures apply to requests for payment of fees and expenses for court-appointed counsel, other appointees, and investigators paid by the Judicial Department on an hourly basis. Payment requests shall be submitted via the Department's online CAC System (CACs) in accordance with the policies and procedures set forth by the State Court Administrator's Office or, if an exception has been granted pursuant to Section V.C.4. of this Chief Justice Directive, by using the standardized "Colorado Judicial Department Request and Authorization For Payment of Fees" form JDF207 (Judicial Department Form). Completion, including attachments, should adhere to the procedures described below. Requests for payment that do not include the necessary information will be returned to the appointee or to the court for completion or correction.

All appointees, both hourly and contract, who have not yet received payment from the Judicial Department must submit a completed W-9 form and, if applicable, an "Authorization to Pay a Law Firm" form before a payment can be issued. Payments are issued/submitted to whomever the attorney has authorized and approved on W-9 and "Authorization to Pay a Law Firm" forms. Therefore, if an attorney is no longer with the law firm indicated on a prior W-9 and/or Authorization to pay a Law Firm, he/she must complete a new form(s) and submit them to the State Court Administrator's Office. The forms are available from the court or from the State Court Administrator's Office by e-mailing [CACpayments@judicial.state.co.us](mailto:CACpayments@judicial.state.co.us). To change only the mailing address, send the address change to the Colorado Judicial Department, 1300 Broadway, Suite 1200, Denver, CO 80203, or call for e-mail instructions.

Billing for Representation of Client with Multiple Cases: When billing for multiple cases in representation of the same client (i.e., companion cases), the appointee should work with the State Court Administrator's Office to ensure the appointments/cases are designated as "concurrent" for billing purposes. Appointees must use the "Concurrent Appointment Notification" form, which is available from the State Court Administrator's Office upon request. This applies to situations in which activity occurs simultaneously in the representation of the party across the multiple cases (example: the appointee attends a single court hearing during which more than one of the client's cases is discussed) and allows for the activity to be billed once via a "master" case. Cases in which the appointee's activity does not overlap multiple cases should not be billed concurrently and should instead be billed by submitting separate invoices for each respective case.

When an attorney is appointed to continue on a case for the purposes of appeal, payment shall be on an hourly basis even if the original appointment was on a contract, flat fee basis.

## **A. PROCEDURES FOR BILLING**

### **1. Detail of Itemized Billing**

Itemized detail is to be submitted through CACS. If an exception has been made and the JDF207 is being used, time sheets must be attached to support the summarized hours billed. Time must be described in sufficient detail to justify the amount of time spent on the activity. Time reported must include all time spent between the beginning and ending dates of the billing and must be in chronological order. Time sheets must be legible – preferably typed. Expenses must be described. A sample itemization is shown on the next page.

**Rates may vary pursuant to Chief Justice Directive or Order. The appointee should contact the local district court, State Court Administrator’s Office or visit the web site at [www.courts.state.co.us](http://www.courts.state.co.us) if there is a question concerning the current authorized rates.**

- a. The billing detail and itemization needs to include a date, distinguish between out-of court and in-court time, and a description of service performed. Time must be billed in *tenths* of an hour using the decimal system. One-tenth of an hour is equal to six (6) minutes. For example, 12 minutes is charged as 0.2 hours.
- b. Mileage itemization must include the date of the trip, the purpose of the trip, and the number of miles traveled for each trip.

### **2. Other Attachments**

- a. Investigators must include the order of appointment appointing the attorney for whom the investigator is working, the court’s order authorizing an investigator, and the amount of expenses the investigator may incur.
- b. If the total fee request (including past payments and the current invoice) exceeds the maximum fee allowed by this Directive as specified in Attachment D(2), a copy of the court’s order authorizing fees beyond the maximum must be submitted. Submitting this copy once is sufficient as long as subsequent billings remain within the newly authorized amount.
- c. If total expenses exceed \$50, all receipts or invoices for those expenses must be submitted with the invoice. If using CACS online billing, submit the receipts to the local court and clearly indicate the case number and billing time frame for which the receipts relate.
- d. All receipts for any expenses outside of the guidelines and an explanation for the additional costs must be submitted.

*John Sample, Attorney at Law*

Date	Activity	In-court	Out-of-court	Paralegal	
07/06/23	Court appearance: Contempt Citation	0.4			
07/06/23	Conference with client		1.1		
08/05/23	Review motions		0.5		
08/09/23	Court appearance	0.3			
08/10/23	Meet with client		1.0		
08/11/23	Prepare motion			0.2	
09/07/23	Travel to court round trip (57 miles)		1.4		
09/07/23	Conf. With client in custody		1.0		
09/07/23	Draft motion			0.2	
09/14/23	Contempt Hearing	0.3			
Dates of service 07/06/23 – 09/14/23		Total hours	1.0	5.0	0.4

<b>SUMMARY OF FEES</b>	<b>Activity:</b>	
	6.0 hours @ \$100 per hour	\$600.00
	0.4 hours @ \$42 per hour	\$16.80
	<b>TOTAL FEES</b>	<b>\$616.80</b>
<b>TOTAL MILEAGE</b>	57 miles @ \$0.50 per mile (or rate defined by §24-9-104 C.R.S.)	<b>\$28.50</b>
<b>SUMMARY OF OTHER EXPENSES</b>	Copies: case file = 12 pages @ \$0.25	\$3.00
	Postage	\$0.50
	<b>TOTAL OTHER EXPENSES</b>	<b>\$3.50</b>
	<b>TOTAL BILLING</b>	<b>\$648.80</b>

**COMPLETION OF THE JDF207 (Hourly Billing if not billing online)**

Completion of the JDF207 form is required by the Judicial Department for payment of court appointees appointed on an hourly basis unless the appointee has been authorized to invoice using CACS (online system). The appointee should keep a copy and submit the original plus one copy. All applicable sections of the form should be completed as indicated in the instructions. Attach all required documents before submitting to the local court. All incomplete Requests for Payment will be returned to the appointee for correction(s).

**Section I.**

Enter the case number of the charges being billed. When billing for multiple cases in representation of the same client (i.e., companion cases), enter all applicable case numbers. If the bill is for appellate charges, include the appeal case number and the original case number being appealed.

Include the name and number of person/(s) represented, the name of the case, applicable county, name of appointing judge/magistrate and current judge/magistrate. Indicate if the case jurisdiction is district or county.

**Section II.**

Enter all applicable appointee information, attorney registration number, name, complete address, phone, fax, e-mail. If the address has changed, check new address box. For more information concerning changes, review the General Information section in this attachment.

The Social Security Number or Tax Id Number must be included on each JDF207 (for more information concerning authorized payee changes, review the General Information section in this attachment).

Indicate the appointment date, if you are an original or substitute appointee, if the case has or has not gone to trial, if the case was originally under contract. If originally under contract, explain why an hourly bill is being submitted and the date circumstances changed resulting in hourly billing.

**Section III.**

Indicate the type of representation provided.

**Section IV.**

Indicate the authority/statute title allowing for the appointment. This is indicated on the original appointment form/order.

**Section V.**

The indigency status of the person represented must be noted. If the person is found indigent, use the date of determination. If the person is not indigent, indicate which statement is applicable to the party represented and if reimbursement is to be ordered by the presiding judge. This information is usually included in the order of appointment or may be found in the application for court-appointed counsel (form JDF208) or another affidavit of indigence, as requested by the court.

**Section VI.**

Under this section all charges are to be summarized.

For the activity *from date*, enter the first chronological date of activity billed from the itemized detail document. For the activity *to date*, enter the last chronological date in which activity occurred as itemized in the detail document. Group the *start* and *to date* for activities in which the effective date of the rates (as set by Chief Justice Directive or Chief Justice Order) are the same.

Instructions for summarizing attorney hours and fees are located on the reverse side of the Request and Authorization for Payment of Fees form (JDF207) #5.

For non-attorney billing activity, summarize all non-attorney hours by category. Next, apply the rate as set by Chief Justice Directive or Chief Justice Order and enter the total charge requested in the right column. Summarize all expenses by type, apply the correlating rates and/or receipts and enter the total charge per category. Charges must correspond to attached receipts.

Total all charges and calculate total amount billed.

Include all prior amounts invoiced for the appointment in the “Total Amount Previously billed” line, (excluding the current request).

Determine the cumulative total of fees charged by appointee for the case by adding the “Total Amount Previously billed” plus the current request amount. If the cumulative total is over the authorized maximum, check the indicator box “Exceeds allowed maximum”. Include the Motion to Exceed Maximum and the approved Order to Exceed Maximum (if possible, this should be judge/magistrate pre-approved and not requested after services are performed).

**Appointee signature and date are required.**

**If this is the final bill, check the “Final Bill” box.**



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Resolution to Amend City Council Rules Regarding Start Times of City Council Meetings and Study Sessions
<b>Item Initiator:</b> Curtis Gardner, City Council Member
<b>Staff Source/Legal Source:</b> Andrea Wood, Assistant City Attorney
<b>Outside Speaker:</b> None
<b>Council Goal:</b> 2012: 2.1--Work with appointed and elected representatives to ensure Aurora's interests

### COUNCIL MEETING DATES:

**Study Session:** 12/11/2023

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, TO AMEND THE RULES OF ORDER AND PROCEDURE FOR THE AURORA, COLORADO, CITY COUNCIL REGARDING STUDY SESSION AND CITY COUNCIL REGULAR MEETING TIMES

Sponsor: Curtis Gardner, Council Member  
Andrea Wood, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

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**Policy Committee Date:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval  
 Forwarded Without Recommendation  Minutes Not Available  
 Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

Mayor Pro Tem Gardner has requested this item to be added to the December 11 study Session and the December 18 regular meeting.

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

Resolution which would amend Council Rules to have study session at 5:30pm and regular council meetings at 7:00pm on the same Mondays.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact  
 Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

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**QUESTIONS FOR COUNCIL**

Does Council wish to move this item forward to a regular meeting?

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**LEGAL COMMENTS**

Article III, Section 8 of the City Charter of the City of Aurora, Colorado, authorizes City Council to “prescribe rules of procedure to govern meetings. A City Council member may place items on the Study Session and Regular/Special Meeting agendas. Each such item shall indicate the party requesting the item. (Rules of Order and Procedure for the Aurora City Council, B.2.) **(Wood)**

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RESOLUTION NO. R2023- \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, TO AMEND THE RULES OF ORDER AND PROCEDURE FOR THE AURORA, COLORADO, CITY COUNCIL REGARDING STUDY SESSION AND CITY COUNCIL REGULAR MEETING TIMES

WHEREAS, the Aurora City Council believes the election of an individual to City Council imposes a heavy responsibility to observe those tenets and requirements which flow from the solemn oath administered at the time of installation to office; and

WHEREAS, the Aurora City Council wants the Rules of Order and Procedure for the Aurora, Colorado City Council to facilitate the fulfillment of the duties and responsibilities contained in the oath of office; and

WHEREAS, the Aurora City Council desires to make certain changes to the Rules of Order and Procedure; and

WHEREAS, as authorized under Article III, Section 8 of the City Charter, the City Council promulgates Rules of Order and Procedure to govern meetings; and

WHEREAS, the Aurora City Council would like to move study session meetings to the same Monday as regular Council meetings, beginning at 5:15pm with the regular Council meeting beginning at 6:30pm.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The Aurora City Council hereby amends Section A (1) of the Council Rules of Order and Procedure and shall read as follows:

(1). Regular City Council Meetings. The City Council will meet in regular session in the Council Chambers of the Aurora Municipal Center on designated Mondays at ~~6:30~~ **6:30** p.m., and on such other days and at such other times as may be chosen by City Council at the last meeting of the calendar year, unless otherwise determined at a prior meeting. Once defined, changes to the calendar can only occur under the Special Meeting Rules set forth in A (2) or with a 2/3 vote of the City Council. At least twenty-four (24) hours prior to the meeting, the City Council shall post the agenda of the meeting in the entryway at the east entrance of the Aurora Municipal Center. The posting location shall be redesignated annually at the last regular City Council meeting of each calendar year.

Section 2. The Aurora City Council hereby amends Section A (5) of the Council Rules of Order and Procedure and shall read as follows:

(5). Study Sessions. The City Council will meet in study session **at 5:15 p.m. on the same** designated Mondays **as the City Council meets in regular session**, and on such other days and at such other times as may be chosen by City Council at the last meeting of the calendar year, unless otherwise determined at a prior meeting. Once defined, changes to the calendar can only occur under the Special Meeting Rules set forth in A (2) or with a 2/3 vote of the City Council. No formal legislative action other than the vote to go into an executive session shall be taken at any Study Session and no quorum shall be necessary. Formal legislative action shall be deemed to be the enactment of an ordinance or the promulgation of a resolution. However, efforts to arrive at a consensus position for the purpose of developing subsequent legislative action shall be permitted. Failure to notify all Council Members shall not adversely affect the calling of a Study Session, provided that the City Council’s Management Analyst has used reasonable efforts to notify all Council Members at least twenty-four (24) hours in advance of a Study Session

Section 3. The City Clerk shall update all official notices, agendas, and communications to reflect the new meeting time, and to ensure the public is properly informed.

Section 4. The Mayor and City Clerk are hereby authorized to execute with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney that are not inconsistent with this resolution.

Section 5. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*Andrea Wood* <sup>JK</sup>  
\_\_\_\_\_  
ANDREA WOOD, Criminal Prosecution Manager

## 2024 Aurora City Council Meeting Calendar

January	February	March	April
<p>1 No meeting - Holiday</p> <p><b>8 Council Meeting</b></p> <p>15 No meeting - Holiday</p> <p><b>22 Council Meeting</b></p> <p>29 No meeting</p> <p>1 New Year's Day (offices closed)</p> <p>15 MLK Jr. Day (offices closed)</p> <p>31 State of the Base</p> <p>17-19 US Conf of Mayors Winter Meeting (Washington)</p>	<p><b>3 Winter Workshop</b></p> <p>5 No meeting</p> <p><b>12 Council Meeting</b></p> <p>19 No meeting - Holiday</p> <p><b>26 Council Meeting</b></p> <p>19 Presidents Day (offices closed)</p>	<p>4 No meeting</p> <p><b>11 Council Meeting</b></p> <p>18 No meeting</p> <p><b>25 Council Meeting</b></p> <p>11-15 Aurora Public Schools spring break</p> <p>18-22 Cherry Creek Schools spring break</p> <p>11-13 NLC Conference (Washington)</p> <p>31 Easter</p>	<p>1 No meeting</p> <p><b>8 Council Meeting</b></p> <p>15 No meeting</p> <p><b>22 Council Meeting</b></p> <p><b>27 Spring Workshop</b></p> <p>29 No meeting</p> <p>22-30 Passover</p>
May	June	July	August
<p><b>6 Council Meeting</b></p> <p>13 No meeting</p> <p><b>20 Council Meeting</b></p> <p>27 No meeting - Holiday</p> <p>1-3 Accelerate CO (Washington)</p> <p>20-21 ICSC Conference</p> <p>27 Memorial Day (offices closed)</p>	<p>3 No meeting</p> <p><b>10 Council Meeting</b></p> <p>17 No meeting</p> <p><b>24 Council Meeting</b></p> <p>19 Juneteenth (offices closed)</p> <p>18-21 CML Conference (Loveland)</p> <p>20-23 US Conf of Mayors (Kansas City)</p>	<p>1 No meeting</p> <p><b>8 Council Meeting</b></p> <p>15 No meeting</p> <p><b>22 Council Meeting</b></p> <p>29 No meeting</p> <p>4 Independence Day (offices closed)</p>	<p>5 No meeting</p> <p><b>12 Council Meeting</b></p> <p>19 No meeting</p> <p><b>26 Council Meeting</b></p> <p>GlobalFest</p>
September	October	November	December
<p>2 No meeting - Holiday</p> <p><b>9 Council Meeting</b></p> <p>16 No meeting</p> <p><b>17 SSS: Budget Presentations</b></p> <p><b>23 Council Meeting</b></p> <p><b>28 Fall Workshop (Budget)</b></p> <p>30 No meeting</p> <p>2 Labor Day (offices closed)</p> <p>22-25 ICMA Conference</p>	<p>7 No meeting</p> <p><b>14 Council Meeting</b></p> <p>21 No meeting</p> <p><b>28 Council Meeting</b></p> <p>2-4 Rosh Hashanah</p> <p>11, 12 Yom Kippur</p> <p>AEDC A-List Dinner</p> <p>31 Halloween</p>	<p><b>4 Council Meeting</b></p> <p>11 No meeting - Holiday</p> <p><b>18 Council Meeting</b></p> <p>25 No meeting</p> <p>5 Election Day</p> <p>11 Veteran's Day (offices closed)</p> <p>13-16 NLC City Summit (Tampa)</p> <p>28-29 Thanksgiving (offices closed)</p>	<p><b>2 Council Meeting</b></p> <p>9 No meeting</p> <p><b>16 Council Meeting</b></p> <p>23 No meeting</p> <p>30 No meeting</p> <p>Holiday Tree Lighting</p> <p>ICSC Recon</p> <p>25 Hanukkah</p> <p>25 Christmas Day (offices closed)</p> <p>31 New Years Eve</p>

Council Meeting / Study Session (24)

Special Study Session (1)

Workshop (3)



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Update to Aurora Code 50-255 Pertaining to Conditions of Probation (Ordinance)
<b>Item Initiator:</b> Shawn Day, Presiding Judge, Aurora Municipal Court
<b>Staff Source/Legal Source:</b> Shawn Day, Presiding Judge / Angela Garcia, Senior Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 1.5--Maintain an unbiased, independent municipal court

### COUNCIL MEETING DATES:

**Study Session:** 11/20/2023

**Regular Meeting:** 12/4/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** 12/18/2023

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING SECTION 50-255 OF THE CITY CODE PERTAINING TO THE CONDITIONS OF PROBATION  
 Shawn Day, Presiding Judge / Angela Garcia, Senior Assistant City Attorney  
 Estimated time: 10 mins

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** Public Safety, Courts & Civil Service

**Policy Committee Date:** 11/9/2023

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**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval  
 Forwarded Without Recommendation  Minutes Not Available  
 Minutes Attached

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**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

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**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

Update to Aurora Code 50-255, Conditions of Probation. The proposed ordinance will bring the Aurora code up to date with State law.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact  
 Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

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**QUESTIONS FOR COUNCIL**

Does Council wish to approve and move forward to regular City Council meeting?

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**LEGAL COMMENTS**

Council has the power to make and publish ordinances consistent with the laws of the state for carrying into effect or discharging the powers and duties conferred by the State Constitution, State Statute, or City Charter and such as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city and the inhabitants thereof. (City Code, Sec. 2-32 and C.R.S., Sec. 31-15-103). City Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of an ordinance. (City Charter, Art. 5-1). (Garcia)

ORDINANCE NO. 2023- \_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING SECTION 50-255 OF THE CITY CODE PERTAINING TO THE CONDITIONS OF PROBATION.

WHEREAS, the Aurora Municipal Court has sentencing alternatives available after an individual has pleaded guilty or has been found guilty of violating City of Aurora municipal ordinances; and

WHEREAS, probation is an alternative sentence which generally allows an individual to serve their sentence outside of a correctional facility; and

WHEREAS, an individual who is sentenced to probation must still meet a number of conditions as part of their probation sentence.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That Section 50-255 of the City Code of the City of Aurora, Colorado is hereby amended to read as follows:

Sec. 50-255. Conditions of probation.

(a) The conditions of probation shall be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life, and to assist him or her to do so. The court shall provide, as an express condition of every sentence, that the defendant shall provide a government-issued photo ID or be photographed by the probation office and be finger-printed, and not violate any of the laws of the United States or of the state or any other state or any ordinance of any municipality, except for minor traffic **infractions violations** (~~defined as violations of six or fewer points~~), but shall conduct himself or herself in every way as an upright and law-abiding citizen and in such a manner as to indicate that a serious effort is being made to improve his or her character during the probationary period. In addition, the standard terms and conditions of supervised probation, unless modified by the court shall be that the defendant:

- (1) Is to pay a fee established pursuant to section 50-38 of the Code.
- (2) Shall make restitution to every victim of his or her conduct, for all damage or injury which was sustained, unless otherwise ordered by the court.
- (3) Shall report, within one working day, any change of address, telephone number, or employment and shall answer all reasonable inquiries by the probation officer and shall not leave the state without first having ~~leave~~ **written permission** of the probation department **or the court**.

- (4) Shall diligently and continuously seek to remain steadily employed or, if a minor, to remain in school on a full-time basis.
- (5) If a minor, shall abstain from use of alcohol, and, if an adult, shall refrain from excessive use of alcohol, and neither juveniles nor adults shall unlawfully use or possess narcotics or of any other dangerous drugs without a prescription.
- (6) Shall participate and cooperate fully in any program involving professional assistance and counseling, ~~as directed by the court or the probation officer~~ **as ordered by the court** and pay any assessed fees thereof.
- (7) Shall report to the probation officer at such times as may be required by the court or by the probation department.
- (8) Defendant shall not violate any municipal, state, or federal law during the probation term except for minor traffic infractions.**
- (9) Defendant shall not harass, molest, intimidate, retaliate against, or tamper with any victims of or any prosecution witnesses of the crime.**
- (10) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court.**
- (11) Defendant shall comply with any other conditions as ordered by the court. For good cause shown and after notice to the defendant, the prosecuting attorney, and the probation officer, and after a hearing, if the defendant or prosecuting attorney requests it, the court may reduce or increase the term of probation or alter the conditions or impose new probation conditions.**

Section 2. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 4. All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ, AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

PASSED AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

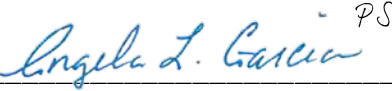


\_\_\_\_\_  
MIKE COFFMAN, Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANGELA L. GARCIA, Senior Assistant City Attorney



# CITY OF AURORA

## Council Agenda Commentary

**Item Title:** The City Council is the governing body of the City and has the authority to approve the Comprehensive Plan and amendments to the Comprehensive Plan. (UDO §146-5.1.1.E). The City Council shall conduct a public hearing on the application. The City Council may approve amendments to the Comprehensive Plan by an ordinance approved by a vote of not less than two-thirds of the entire membership of City Council (7 votes). (UDO §146-5.4.1.A.2.c). A Comprehensive Plan amendment shall be approved only if it promotes the long term economic, social, and environmental health of the City and protects the public health, safety, and welfare of the citizens of Aurora. (UDO §146-5.4.1.A.3). Membership of City Council will change prior to final reading of this item. Council Members should be cautious about voting on items if they were not present at the public hearing. If a Council Member wishes to vote on an item for which they were not present at the public hearing they should thoroughly review the record, including the minutes, any video, and recordings, if available. If the Council Member does not believe they are able to review the entire record from the public hearing they should refrain from voting and abstain. In that case, there will be one less vote available for approval. (McClelland)

**Item Initiator:** Deborah Bickmire, Senior Planner, Planning and Development Services

**Staff Source/Legal Source:** Deborah Bickmire, Planner, Planning and Development Services / Lena McClelland, Assistant City Attorney

**Outside Speaker:** N/A

**Council Goal:** 2012: 5.0--Be a great place to locate, expand and operate a business and provide for well-planned growth and development

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 11/27/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** 12/4/2023

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING THE 2018 COMPREHENSIVE PLAN TO CHANGE THE PLACETYPE MAP FROM CITY CORRIDOR PLACETYPE TO EMERGING NEIGHBORHOOD PLACETYPE FOR THE AREA BOUNDED BY EAST 54TH AVENUE TO THE NORTH, EAST 52ND AVENUE TO THE SOUTH, PICADILLY ROAD TO THE WEST, AND NORTH TIBET ROAD TO THE EAST (GREEN VALLEY RANCH COMPREHENSIVE PLAN AMENDMENT)

Deborah Bickmire, Senior Planner, Planning and Development Services / Lena McClelland, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting
- Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Planning and Zoning Commission

**Policy Committee Date:** 10/25/2023

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

The Planning and Zoning Commission heard the request for a Comprehensive Plan Map Amendment in a public hearing on October 25, 2023 and voted unanimously (6-0) to recommend approval to City Council. Commissioner Ahern was absent.

**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

The request is for approval of a Comprehensive Plan Amendment to redesignate 78.8 acres from City Corridor Placetype to Emerging Neighborhood Placetype to support development in the proposed Green Valley Ranch Master Plan (GVRMP). The subject property is located south of E. 54th Avenue, north of E. 52nd Avenue, between Picadilly Road and N. Tibet Road. The site is undeveloped and is included in the proposed Green Valley Ranch Master Plan Amendment 2.

The amendment to the Comprehensive Plan would support the future development within the GVRMP, which consists of approximately 884 acres and is located between Picadilly Road and E-470 and E. 56th Avenue and E. 38th Avenue. The Comprehensive Plan amendment area, specifically located between E. 54th Avenue and E. 52nd Avenue, designated City Corridor Placetype, is bounded by City Corridor Placetype to the north and east, and Emerging Neighborhood to the south. The City and County of Denver is located west of Picadilly Road. The purpose of this request is to allow single-family residential uses, enabling the applicant to expand the existing active adult residential community located south of E. 52nd Avenue.

Clayton Properties Group II is proposing Zoning Map Amendments consistent with the proposed comprehensive plan amendments, to rezone 78.8 acres from Mixed Use-Airport (MU-A) to Medium Density Residential (R-2) and 28.3 acres from Mixed Use-Regional (MU-R) to Mixed Use-Airport (MU-A).

The proposed Comprehensive Plan Amendment complies with the approval criteria found in Section 146-5.4.1.A.3 because it supports the practice of reserving ideal locations for significant and strategic commercial development; it supports the goal to increase high-quality housing options of all types and at all price levels throughout the city through ongoing collaboration with the development community; and, the amendment supports the goal to use high-quality community design to create vibrant and active places where people choose to live and work.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact       Budgeted Expenditure Impact       Non-Budgeted Expenditure Impact  
 Workload Impact       No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

N/A
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**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A
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**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A
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**QUESTIONS FOR COUNCIL**

Does the City Council wish to approve the proposed Comprehensive Plan Map Amendment?

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**LEGAL COMMENTS**

The City Council is the governing body of the City and has the authority to approve the Comprehensive Plan and amendments to the Comprehensive Plan. (UDO §146-5.1.1.E).

The City Council shall conduct a public hearing on the application. The City Council may approve amendments to the Comprehensive Plan by an ordinance approved by a vote of not less than two-thirds of the entire membership of City Council (7 votes). (UDO §146-5.4.1.A.2.c).

A Comprehensive Plan amendment shall be approved only if it promotes the long term economic, social, and environmental health of the City and protects the public health, safety, and welfare of the citizens of Aurora. (UDO §146-5.4.1.A.3).

Membership of City Council will change prior to final reading of this item. Council Members should be cautious about voting on items if they were not present at the public hearing. If a Council Member wishes to vote on an item for which they were not present at the public hearing they should thoroughly review the record, including the minutes, any video, and recordings, if available. If the Council Member does not believe they are able to review

the entire record from the public hearing they should refrain from voting and abstain. In that case, there will be one less vote available for approval. (McClelland)

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**Green Valley Ranch East  
Comprehensive Plan Amendment and  
Zoning Map Amendments**

City of Aurora, Colorado



*Aurora is  
Worth Discovering!*



**Planning &  
Development Services**  
15151 E. Alameda Parkway  
Aurora CO 80012 USA  
AuroraGov.org  
303.733.2117  
GIS@auroragov.org

Case Numbers: 2022-1001-00  
Development Application: #1662-25



October 17, 2023

## **Green Valley Master Plan – Comprehensive Plan Amendment and Zoning Map Amendment Request**

On behalf of Clayton Properties Group II, Inc., we are pleased to submit our proposed Second Amendment to the Green Valley Ranch Master Plan (MP), Comprehensive Plan Amendment and Rezone for the City of Aurora's review.

The Green Valley Ranch MP (formerly Framework Development Plan) was approved in November of 2008 for 2,500 acres. The MP was amended in 2018 to modify the land uses and open space on 588 acres located between 38<sup>th</sup> Avenue and 52<sup>nd</sup> Avenue west of E-470 (Amendment 1). Amendment 2 proposes modified planning areas on the 301 acres located between Picadilly Road and E-470; and 56<sup>th</sup> Avenue and 52 Avenue. This Amendment revises the total MP area from approximately 2,500 acres to 884.1 acres.

The Green Valley Ranch MP is located between Picadilly Road to the west, and E-470 to the east and between 38<sup>th</sup> Ave to the south, and 56<sup>th</sup> Ave to the north. The Comprehensive Plan designates the area between 38<sup>th</sup> Ave. and 52<sup>nd</sup> Ave. as Emerging Neighborhood placetype, and City Corridor placetype between 52<sup>nd</sup> Ave. and 56<sup>th</sup> Ave. The site is bordered by City Corridor placetype to the north of 56<sup>th</sup> Ave, Industry Hub placetype south of 38<sup>th</sup> Ave., City Corridor to the east across E-470, and City and County of Denver to the west. See Exhibit A for existing placetypes.

The applicant is requesting to amend the Comprehensive Plan to re-designate 78.8 acres from City Corridor to Emerging Neighborhood. The area is bounded by Picadilly Road along the west, Tibet Road along the east, 52<sup>nd</sup> Ave to the south, and 54<sup>th</sup> Ave to the north. This amendment is proposed to better align with the proposed uses that will have an emphasis on residential. Our intent is to extend the active adult community to the north while maintaining the City Corridor placetype along the 56<sup>th</sup> Ave. corridor for commercial development that will support both nearby residential communities and mixed-use areas. An open space corridor will act as a link between the active adult communities while also including a neighborhood park. The City Corridor placetype will include a wide range of uses, including commercial, retail, office, institutional, and multifamily residential consistent with that zoning. See Exhibit B for proposed placetypes.

The proposed comprehensive plan amendment stays consistent with intent of the existing placetypes by maintaining City Corridor along 56<sup>th</sup> Ave., a major arterial, and E-470. The extension of Emerging Neighborhood north of 52<sup>nd</sup> Ave. is compatible with the existing Active Adult neighborhood south of 52<sup>nd</sup> Ave as well as the single-family residential neighborhoods to the west in the City and County of Denver.

## Green Valley Master Plan – Rezone Request

We are also requesting to rezone two parcels located between Picadilly Rd. and E470, and north of 52<sup>nd</sup> Ave to 56<sup>th</sup> Ave.

We are requesting to modify 78.8 Ac. located from Picadilly Road to Tibet Road and 52<sup>nd</sup> Ave to 56<sup>th</sup> Ave, from Mixed-Use Airport (MU-A) to Medium Density Residential (R-2) zone district. This will allow for the expansion of the active adult neighborhood to meet market demand. See Exhibit D for proposed zoning.

We are also requesting to amend the zoning for 28.3 acres from Mixed Use Regional (MU-R) to Mixed Use Airport (MU-A). This area is located east of Tibet Road to the CIG easement, between 52<sup>nd</sup> Ave and 55<sup>th</sup> Ave. We are requesting to change this to MU-A zone district to allow for single family detached homes east of Tibet Road. This would allow for a more diverse residential neighborhood who will ultimately be the main users of the surrounding mixed-use area.

The site is bordered by MU-A (Mixed Use-Airport) to the north, R-2 (Medium Density Residential) to the south, and MU-R (Mixed Use-Regional) to the east (of E-470). See Exhibit C for existing zoning.

We believe the proposed zoning is compatible with the surrounding zoning districts by maintaining MU-R and MU-A along 56<sup>th</sup> and E-470 for regional commercial, retail and service uses. Residential single-family and multi-family uses are permitted as part of the overall mix of uses in the MU-A zoning district. The extension of R-2 north of 52<sup>nd</sup> Ave. is compatible with the existing residential uses to the south as well as the single-family residential neighborhoods to the west in Denver. 52<sup>nd</sup> Ave will be classified as a collector street that connects Picadilly Road to Tibet Road which will enhance connectivity thru the site.

### *Conformance with Rezone Criteria:*

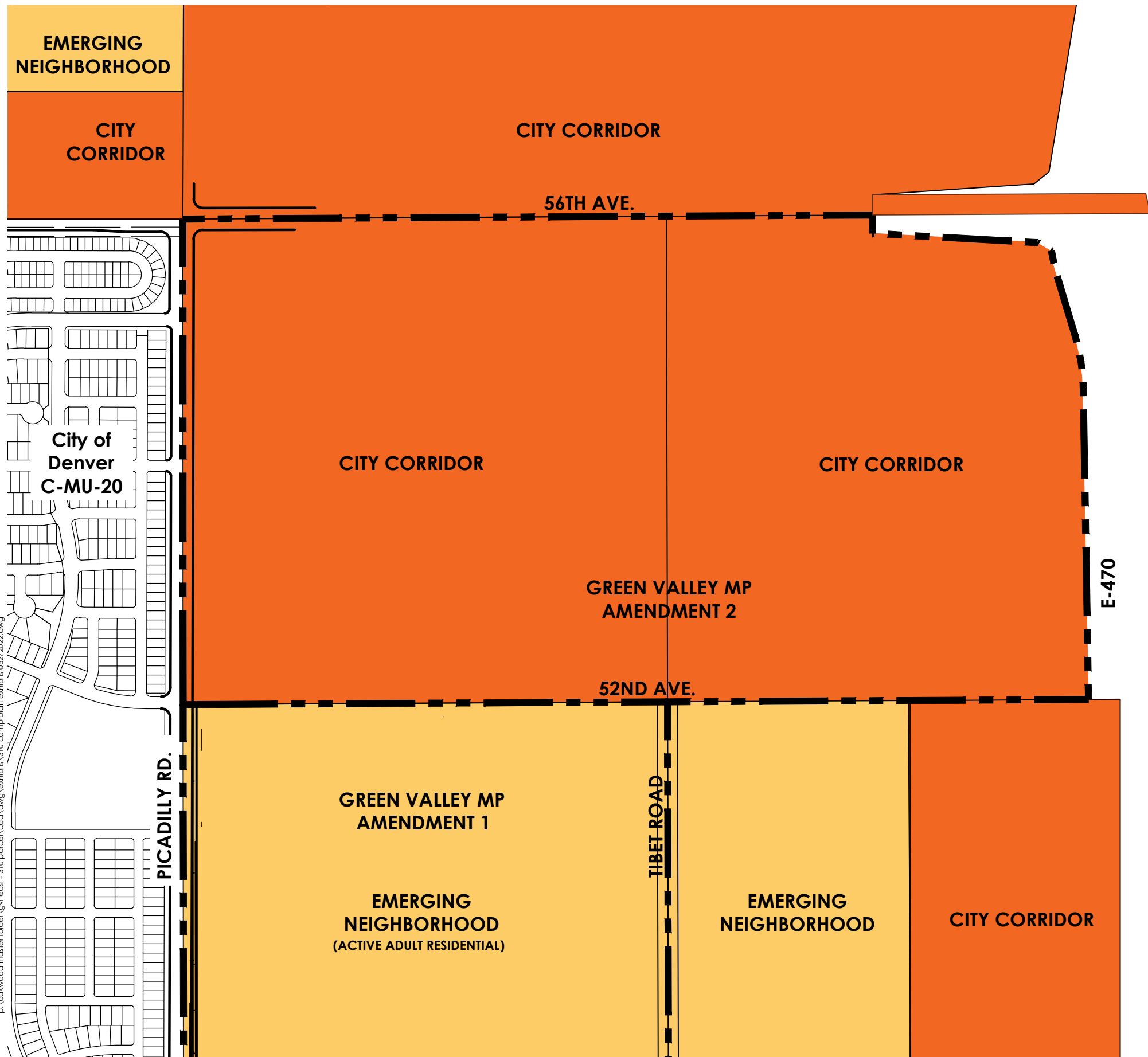
- i. *The change to the Zoning Map is needed to correct an error (change in the character of surrounding areas does not constitute an error in the map); or*
    - There is no error
  - ii. *The change to the Zoning Map is required because of changed conditions or circumstances on the property or in the surrounding area and:*
    - More demand for residential development and less demand for commercial and office space. This rezone request is in response to the changing demands within the region.
- a. *The applicant has demonstrated that the proposed initial zoning or rezoning is consistent with the spirit and intent of the Comprehensive Plan, with other policies and plans adopted by the City Council, and with the purpose statement of the proposed new zone district(s);*
    - The proposed rezone keeps with the Comprehensive Plan City Corridor Placetype by maintaining the MU-R and MU-A along 56<sup>th</sup> and E-470 which will promote regional commercial, retail and service uses. Residential single-family and multi-family uses are permitted as part of the overall mix of uses in the MU-A zoning district. Proposed residential uses in MU-A and R-2 will be located outside of the commercial corridor. The



extension of R-2 to the north is compatible with the existing Active Adult residential south of 52<sup>nd</sup> Ave as well as the single-family residential neighborhoods to the west in Denver. This extension of R-2 is accompanied by a concurrent Comprehensive Plan amendment which extends Emerging Neighborhood Placetype north.

- b. *The applicant has demonstrated that the size, scale, height, density, and multi-modal traffic impacts of the proposed initial zoning or rezoning are compatible with surrounding development or can be made compatible with surrounding development through approval conditions; and*
- The property is currently vacant and the surrounding property has not been developed, therefore, there should be little to no effect on surrounding development.
- c. *The application demonstrates that the change in zoning will not create significant dislocations of tenants or occupants of the property, or that any impacts are outweighed by other public benefits or progress toward other Comprehensive Plan goals that would be achieved by approval of the application.*
- The property in question is currently vacant and no dislocation of tenants or occupants will occur.

We are excited about the opportunity to continue work in this rapidly changing E-470 Corridor. It is our intent to provide the framework to expand upon the successful Green Valley Ranch master-planned community and create long lasting value, which is an important component in implementing the City of Aurora's future for this area.

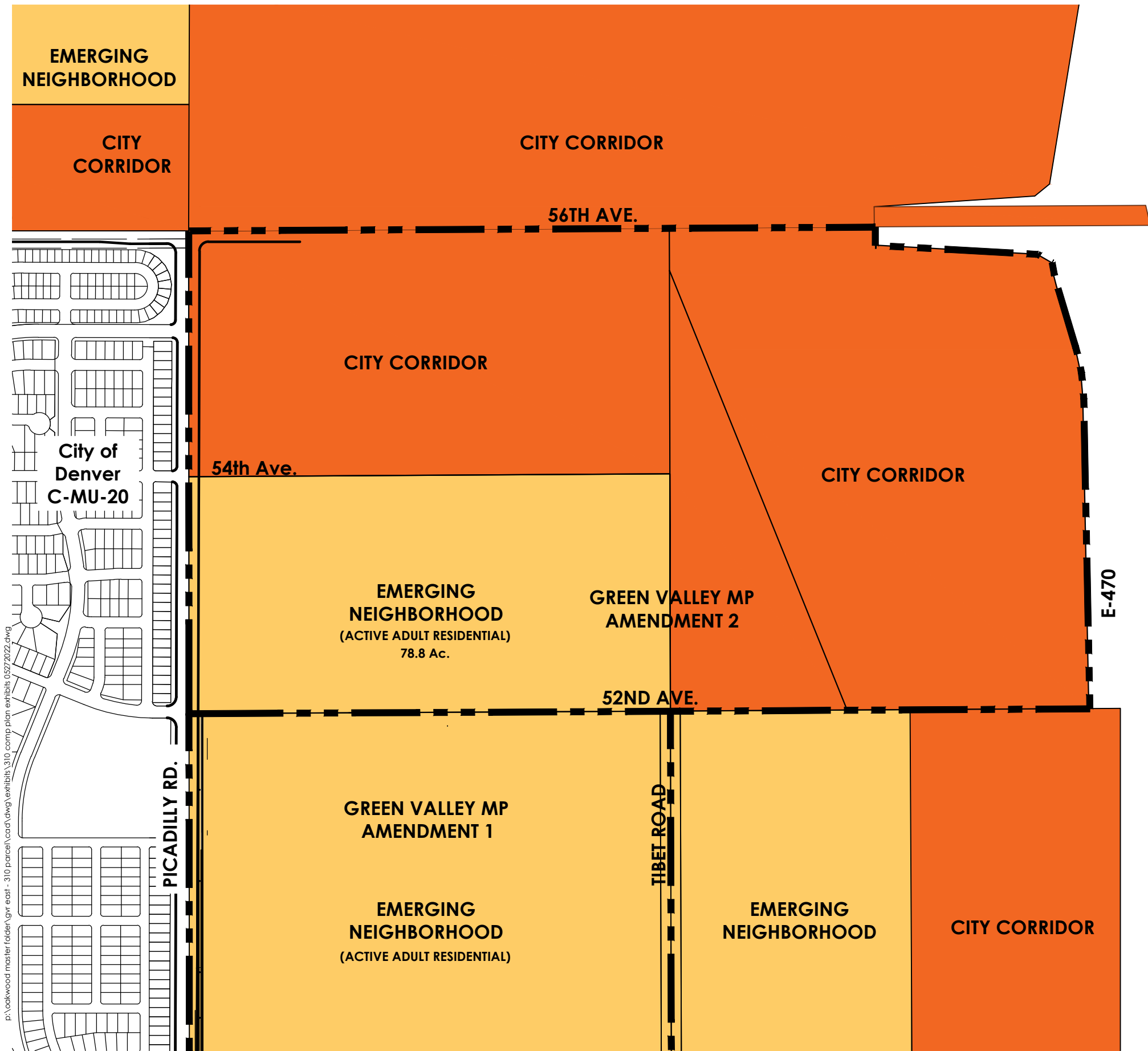


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# Green Valley Master Plan

## EXHIBIT A: EXISTING COMPREHENSIVE PLAN PLACETYPE DESIGNATIONS

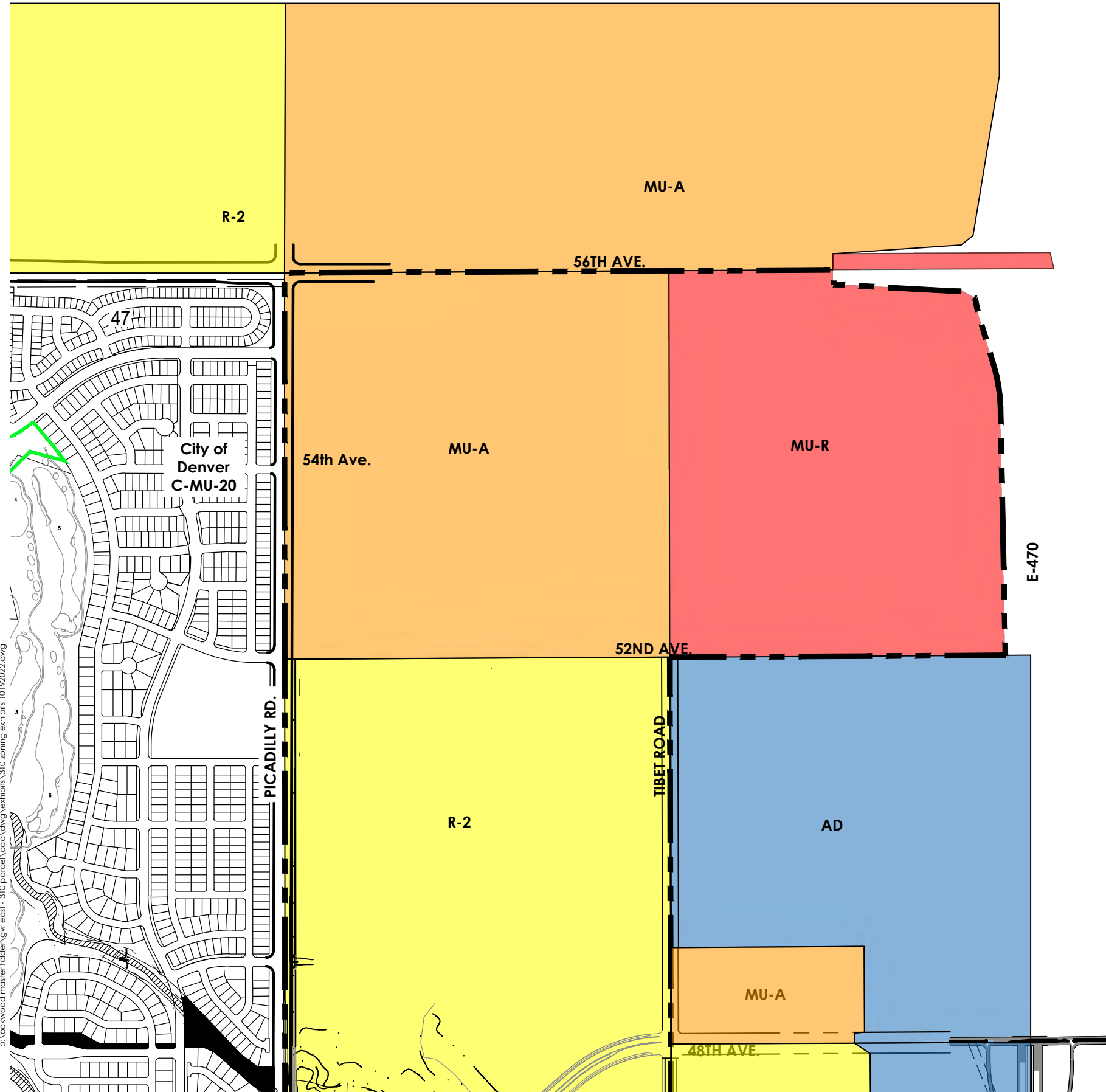




# Green Valley Master Plan

## EXHIBIT B: PROPOSED COMPREHENSIVE PLAN PLACETYPE DESIGNATION

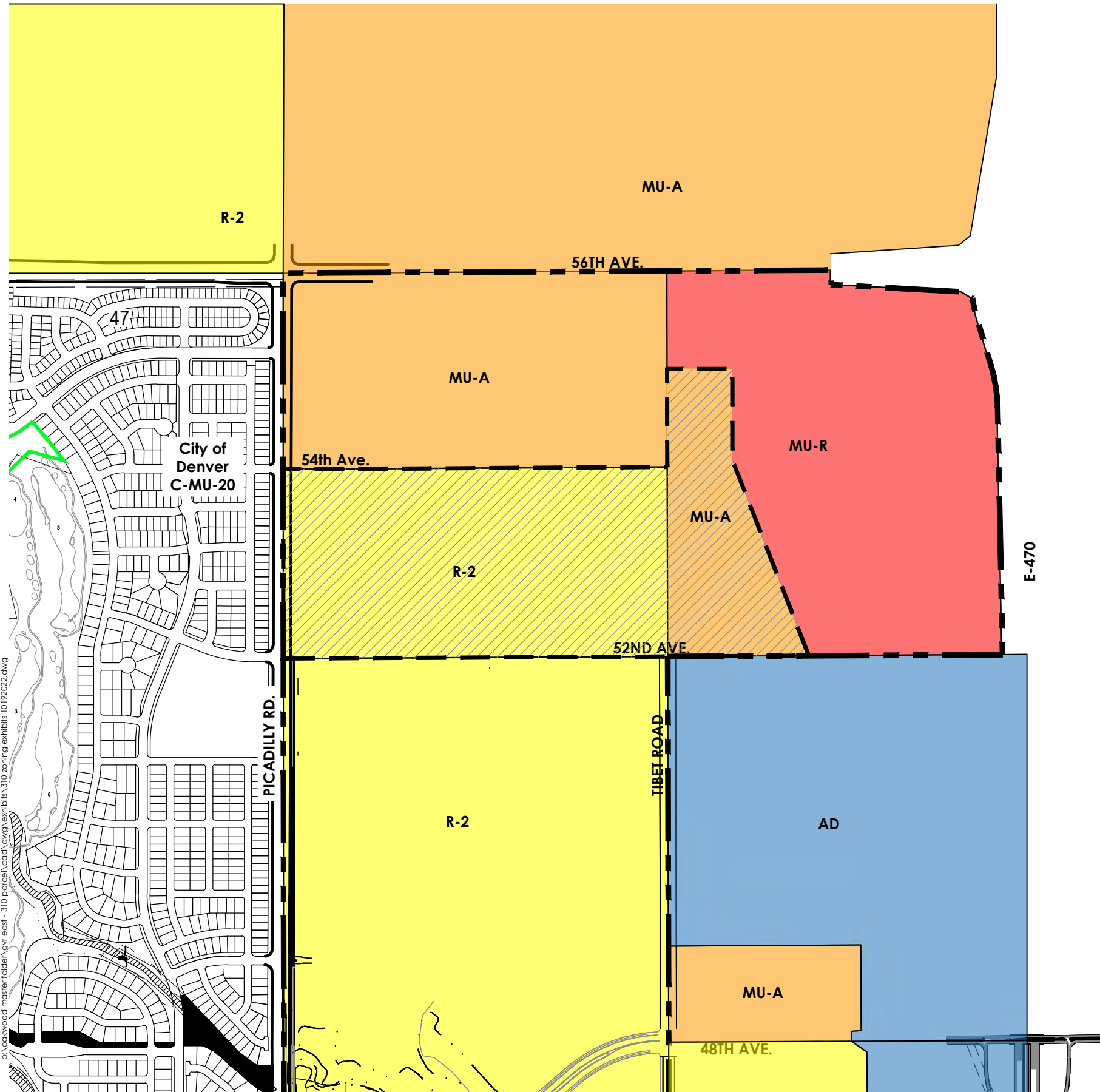
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- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS

**Green Valley Master Plan**  
**EXHIBIT C: EXISTING ZONING DESIGNATION**





- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS

Rezone Parcels	Acres	Zone District(s)
Green Valley Amendment 2 (SE 1/4)	28.3	MU-A
Green Valley Amendment 2 (SW 1/4)	78.8	R-2
<b>Total</b>	<b>107.1</b>	

# Green Valley Master Plan

## EXHIBIT D: PROPOSED ZONING DESIGNATION



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## EXHIBIT A

## ZONING MAP AMENDMENT

A PORTION OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 66 WEST, SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO, **TO BE DESIGNATED AS R-2**, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER, WHENCE THE EAST LINE OF SAID NORTHWEST QUARTER BEARS NORTH 00°07'57" WEST, WITH ALL BEARINGS REFERENCED HEREIN BEING RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, SOUTH 89°40'33" WEST, A DISTANCE OF 2,639.49 FEET TO THE SOUTHWEST CORNER THEREOF;

THENCE DEPARTING SAID SOUTH LINE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, NORTH 00°01'58" WEST, A DISTANCE OF 1,299.62 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89°39'00" EAST, A DISTANCE OF 2,637.23 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER;

THENCE ALONG SAID EAST LINE, SOUTH 00°07'57" EAST, A DISTANCE OF 1,300.81 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 78.751 ACRES, (3,430,398 SQUARE FEET), MORE OR LESS.

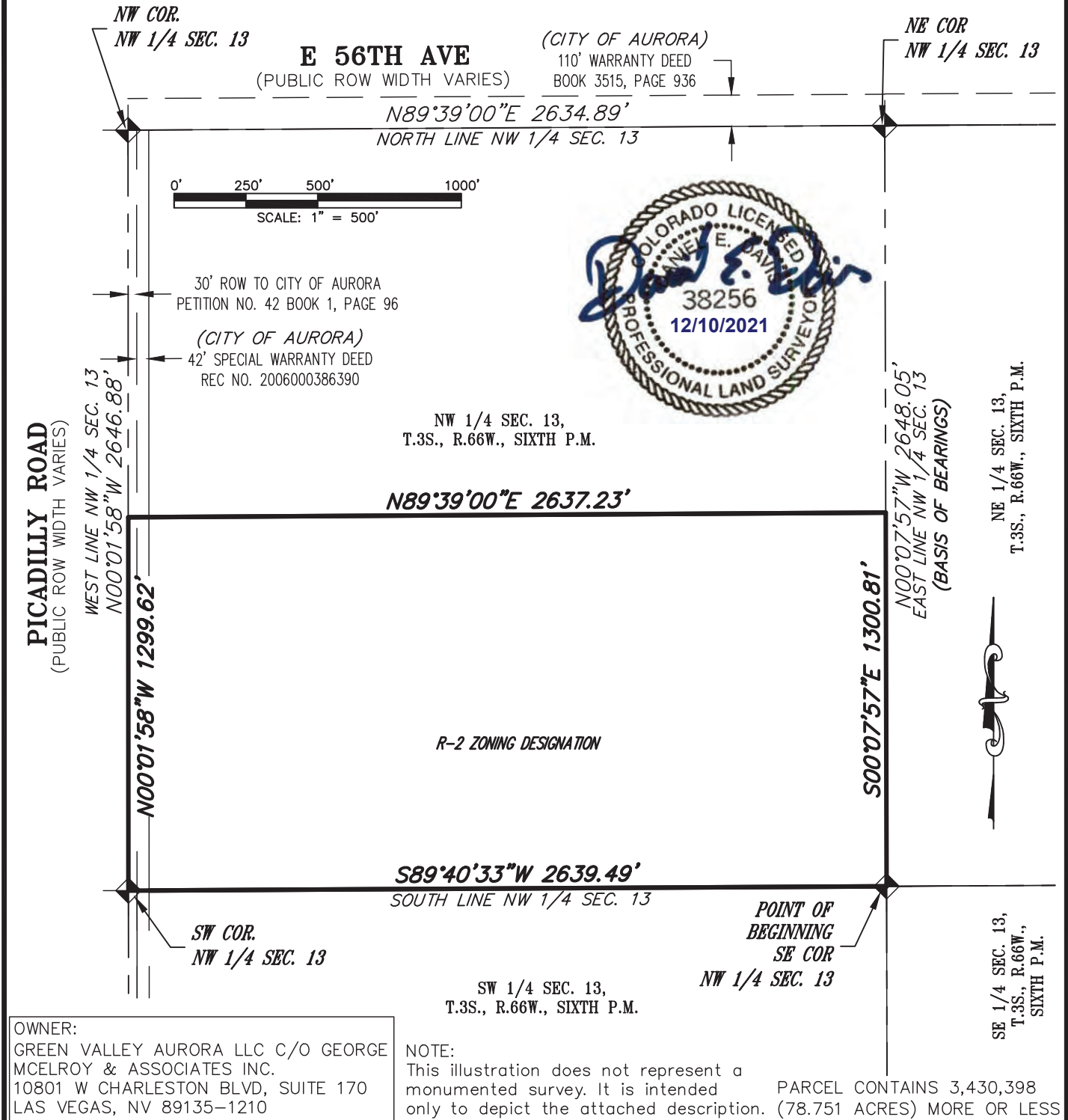
ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

ILLUSTRATION ATTACHED AND MADE A PART HEREOF.



DANIEL E. DAVIS, PLS 38256  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122

ILLUSTRATION FOR EXHIBIT A  
SHEET 2 OF 2



<b>CITY OF AURORA, COLORADO</b>		
DRAWN BY: DED	SCALE: 1"=500'	R-0-W FILE NO.
CHECKED BY: JRW	DATE: 12/3/2021	JOB NO. 19319-28

**A ZONING MAP AMENDMENT**  
BEING A PART OF THE NW 1/4 OF SEC. 13  
T.3S., R.66W., SIXTH P.M.  
CITY OF AURORA, COUNTY OF ADAMS  
STATE OF COLORADO

**EXHIBIT B****ZONING MAP AMENDMENT**

A PORTION OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 66 WEST, SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO, **TO BE DESIGNATED AS MU-(A)**, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER, WHENCE THE WEST LINE OF SAID NORTHEAST QUARTER BEARS NORTH 00°07'57" WEST, WITH ALL BEARINGS REFERENCED HEREIN BEING RELATIVE THERETO;

THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, NORTH 00°07'57" WEST, A DISTANCE OF 1,974.19 FEET;

THENCE DEPARTING SAID WEST LINE, SOUTH 89°54'35" EAST, A DISTANCE OF 448.48 FEET;

THENCE SOUTH 00°00'11" EAST, A DISTANCE OF 624.34 FEET;

THENCE SOUTH 21°19'41" EAST, A DISTANCE OF 626.80 FEET;

THENCE SOUTH 21°20'00" EAST, A DISTANCE OF 815.62 FEET TO THE SOUTH LINE OF SAID NORTHEAST QUARTER;

THENCE ALONG SAID SOUTH LINE, SOUTH 89°40'22" WEST, A DISTANCE OF 968.65 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 28.316 ACRES, (1,233,463 SQUARE FEET), MORE OR LESS.

ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

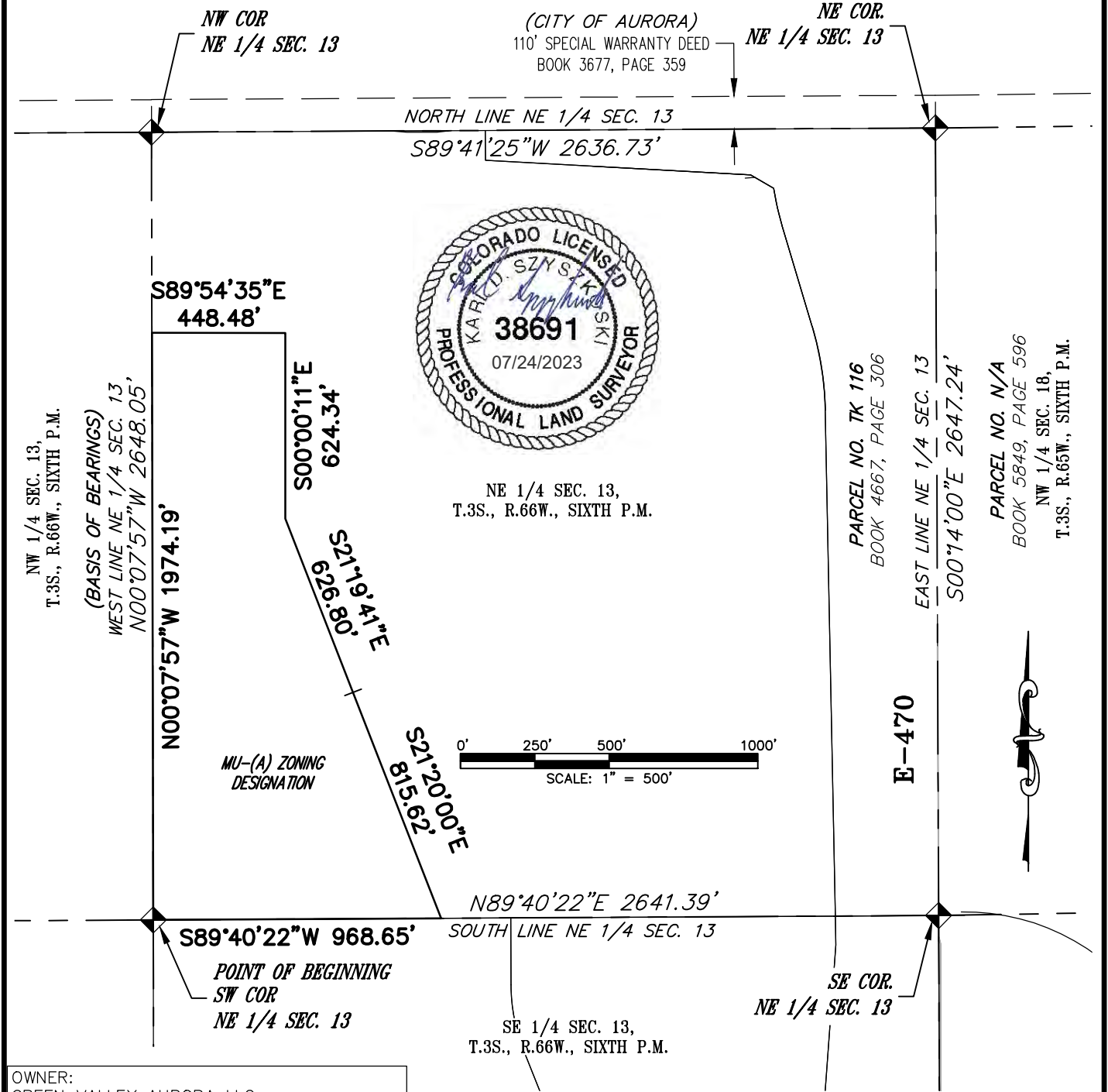
ILLUSTRATION ATTACHED AND MADE A PART HEREOF.

KARL SZYSZKOSKI, PLS 38691  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122





ILLUSTRATION FOR EXHIBIT B  
SHEET 2 OF 2



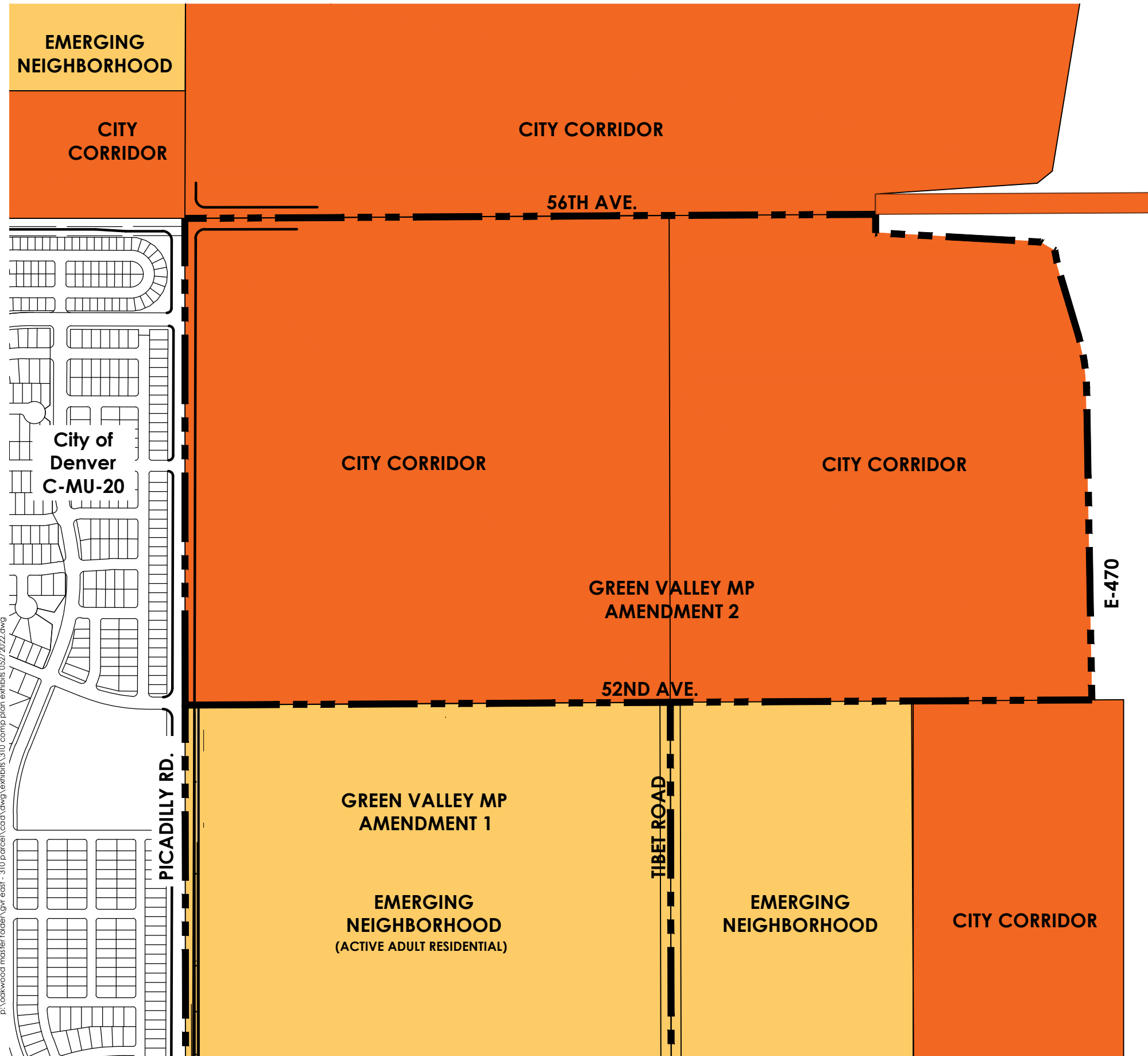
OWNER:  
GREEN VALLEY AURORA LLC  
C/O AWH VENTURES INC  
1700 S PAVILION CENTER DR STE 300  
LAS VEGAS, NV 89135-1862

NOTE:  
This illustration does not represent a  
monumented survey. It is intended  
only to depict the attached description.

PARCEL CONTAINS 1,233,463  
(28.316 ACRES) MORE OR LESS

<b>CITY OF AURORA, COLORADO</b>		
DRAWN BY: KDS	SCALE: 1"=500'	R-O-W FILE NO.
CHECKED BY: DED	DATE: 07/24/2023	JOB NO. 19319-28

**A ZONING MAP AMENDMENT**  
BEING A PART OF THE NE 1/4 OF SEC. 13  
T.3S., R.66W., SIXTH P.M.  
CITY OF AURORA, COUNTY OF ADAMS  
STATE OF COLORADO

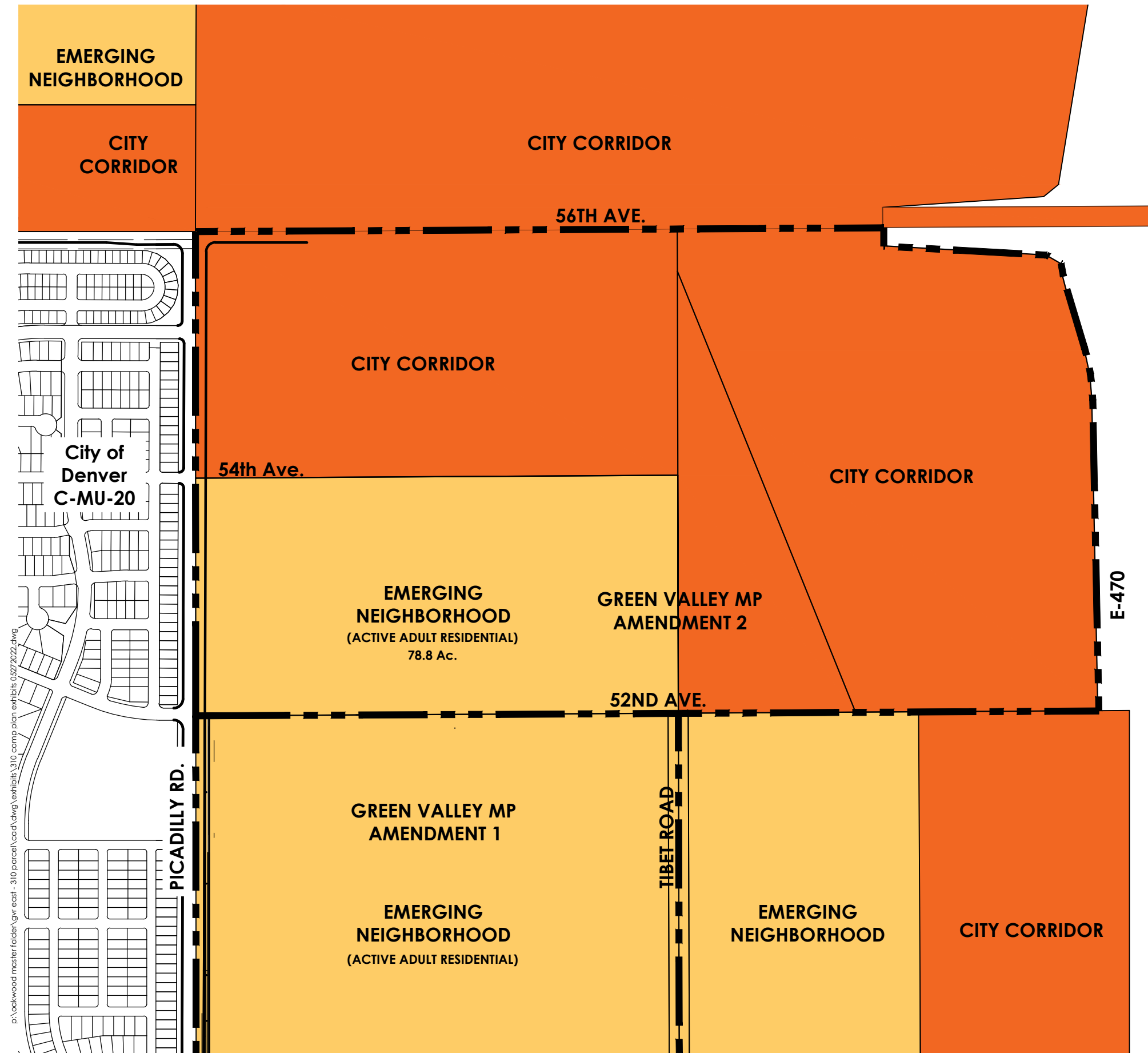


# Green Valley Master Plan

## EXHIBIT A: EXISTING COMPREHENSIVE PLAN PLACETYPE DESIGNATIONS

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**Green Valley Master Plan**  
**EXHIBIT B: PROPOSED COMPREHENSIVE PLAN PLACETYPE DESIGNATION**



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## Form B: MP Narrative

### 1. General Description of the MP

*Briefly describe the general character of your proposed MP. What will be the predominant land uses? What market segment is the proposed development designed to serve?*

In 2008 a 2,500 Ac. Master Plan (MP), formerly Framework Development Plan (FDP), for Green Valley Ranch was approved. This MP included a variety of uses including residential, commercial, mixed use and a variety of parks and open space throughout. The MP was amended for 588 acres west of E-470 known as Amendment 1 and received approval in 2018. Amendment 1 modified planning areas and open space for the 588-acre area, however, there were no other changes made to the MP. The second amendment proposes to modify the 301 acres North and east of 52<sup>nd</sup> Ave. The Master Plan area is also being revised to remove all the area from the original MP approval located east of E-470.

The proposed Green Valley Ranch MP Amendment is to revise the land uses for the 301 acres north and east of 52<sup>nd</sup> Avenue, update land use maps to better align with current site plans, to remove the area east of E-470 from the MP and amend the property boundary due to E-470 purchasing a portion of the property. The proposed amendment also includes the addition of Urban Design and Landscape and Architectural Standards for Commercial/Retail uses.

We are also proposing a rezone with this Green Valley Ranch MP amendment for parcels located north of 52<sup>nd</sup> Avenue between Picadilly Road to the CIG Gas Easement east of Tibet Road. The site is bordered by MU-A (Mixed Use-Airport) to the north, R-2 (Medium Density Residential) to the south, MU-R (Mixed Use-Regional) to the east (of E-470). The Active Adult neighborhood located between 48<sup>th</sup> Ave and 52<sup>nd</sup> Ave between Picadilly Road and E Tibet Road will be expanded to the north. This community is focused on the 55+ age group, while residential uses south of 48<sup>th</sup> Ave are focused on all age groups. Adjacent to 56<sup>th</sup> Avenue and East of Picadilly Road the land uses will be commercial/retail uses to serve this community and other surrounding communities near E-470.

### 2. Defining Character of the MP

*Describe how your proposed MP will create a unique community with a definable character and special "sense of place". What facilities, amenities and special design features will set it apart in the marketplace from similar developments in your*

*area?*

Green Valley Ranch MP will be a unified community following the “Colorado” theme. This theme reflects the beauty of the Colorado foothills landscape and will have a more rustic character. Predominant architectural styles will include Classic, Contemporary, Homestead, and Victorian with materials complementing the surrounding area.

The architecture is not defined by neighborhood, but rather by a mix of product types. The residential areas throughout the development consist of a variety of housing types: single-family detached homes, motorcourts with single-family detached, front loaded single-family attached duplex homes, and may include Single-Family Attached and multifamily homes within the mixed-use planning areas. These varying styles create diverse neighborhoods in both style and affordability. The primary landscape theme consists of large sweeping native areas that use landforms and native plantings indicative of the Colorado foothills. Large planting beds located along streets and trails will be made up of masses of grasses, shrubs, and trees to provide both seasonal interest and views into and out of the site. Landforms will be accentuated with the use of berming and rock outcroppings to create spaces for both wildlife and residents to enjoy.

The commercial planning areas will include a variety of land uses, including office, institutional and retail. A component of the commercial development is a Main Street per the Mixed-Use Regional District (MU-R) Aurora standards. These main street standards are further described in Tab 10. Due to close proximity to E470 and the interchange at 56<sup>th</sup>, the commercial center is positioned to attract a variety of commercial uses which may include large scale retail, office or warehouse retail. Commercial uses may include retail shops, restaurants, pedestrian spaces, and outdoor plazas. The vision for Main Street will be to create a high-quality public space for the Green Valley Ranch community. The commercial planning areas and Main Street will reflect the community ‘Colorado’ theme through architecture, signage, urban spaces, and site furnishings.

### **3. Zoning Conformance**

*Does the MP accurately reflect adopted zone district boundaries?*

The Green Valley Ranch MP Amendment area is located within R-2, MU-A and MU-R zone districts. R-2 is located from 54<sup>th</sup> avenue to the north, 38<sup>th</sup> avenue to the south, and from Picadilly Road to the west to E470 to the east. The Mixed Use Airport (MU-A) and Mixed Use Regional District(MU-R) is

located from the 54<sup>th</sup> avenue to the south to 56<sup>th</sup> avenue to the north, and from Picadilly Road to the west to E-470 to the east. A Zone Map Amendment is concurrently being proposed with this MP Amendment to rezone 78.8 Acres of MU-A north of 52<sup>nd</sup> Ave to R-2 zone designation in order to extend the active adult community. We're also proposing to rezone 28.3 Acres of the current MU-R east of Tibet Road to MU-A. Refer to the Rezone exhibits that are provided as part of that submittal.

#### 4. Potential Regulatory Conflicts

*Are there any existing or potential conflicts between MP design ordinance requirements and the terms of any existing annexation agreements or agreements with other jurisdictions or interest groups? If so what are they and how you propose to resolve them?*

The Original Annexation Agreements include the following park and school dedication requirements:

Public Land Dedication - 6% of the area zoned for residential uses to be used for open space, and 2% of the area zoned for non-residential uses to be used for municipal purposes including fire facilities. School site dedications- up to 4% of the area zoned for residential uses. The following dedications were provided in Amendment 1:

##### Public Facilities

2% of non-residential acreage (149.7 x 2% = 3.0 Ac)

- Land dedicated to city for future fire station along 48<sup>th</sup> Ave.

##### Schools

###### P-8 School:

614 Elementary School Students (.0175 acres/child) = 10.75 ac

289 Middle School Students (.025 acres/child) = 7.23 ac

Subtotal: 17.98 ac

- Amendment 1 included an 18.0 Ac school site
- Additional School dedication requirements will be met for all residential uses once future site plans exceed the original dedications.

###### High School:

361 High School Students (.032 acres/child) = 11.565 ac

Total Acres Required = 29.55 ac

Open Space:

6% of residential acreage (564 Ac x 6% = 34 Ac)

Green Valley Ranch Master Plan:

Neighborhood Park: (3 AC. Per 1000 Residents)

Required: 31.2 acres

Provided: 31.2 acres

Community Park: (1.1 AC. Per 1000 Residents)

Required: 10.5 acres

Provided: 6.6 acre cash-in-lieu payment made as part of amendment 1.

Remaining payment to be made by first residential plat of either PA45-48.

Open Space: (7.8 AC. Per 1000 Residents)

Required: 81.0 acres

Provided: 82.7 acres

## 5. Adjustments

*Does your current design require any ordinance waivers in order to be approved? If so, list each proposed waiver, and answer the following questions for each:*

- *What are the specific site-related characteristics of your site that have led to the waiver request? (Do not include self-imposed hardships or constraints as a justification. Financial constraints may be considered, but only as they relate to unusual site conditions. Do not simply respond that meeting all development standards would be too costly.)*
- *What design alternatives have you considered to avoid the waiver? Why weren't these alternatives chosen?*
- *What measures have been taken to reduce the severity or extent of the proposed waiver?*
- *What compensating increases in design standards have you proposed to mitigate the waiver's impact?*

There are no adjustments being requested in the MP.

## 6. Required City Facilities

*What additional city facilities or services will the City of Aurora have to provide in order for your MP to be implemented? What police, fire, and recreation facilities are required and where are they located (inside or*

*outside your MP boundary.) To what extent will your development plan help to fund or construct these facilities?*

- As part of this Master Plan, the developer will be responsible for the construction of and/or funding of the roads and services prior to dedication to the City of Aurora. The City of Aurora will provide sewer and water services, police, fire, and library services. The City will also provide maintenance for public parks and public streets following dedication to the City. See Public Improvements Phasing Plan, Form J and the Development Agreement.
- A summary of the proposed water and sewer service strategy is contained in Form A. For additional detail, please refer to the Master Utility Plan and the Development Agreement.
- Picadilly Road, 56<sup>th</sup> Avenue and 48<sup>th</sup> Avenue are planned as six-lane Principal Arterials. 38<sup>th</sup> Avenue is planned as a four-lane Minor Arterial. 52<sup>nd</sup> Avenue, Tibet Road from 38<sup>th</sup> Ave to 48<sup>th</sup> Ave, and 38<sup>th</sup> Avenue are planned as three-lane collectors. 42<sup>nd</sup> Avenue is planned as a two-lane collector. Tibet Road from 48<sup>th</sup> Ave to 56<sup>th</sup> Ave is planned as a four-lane Minor Arterial. The arterials will require improvements based on City standards with development phasing. See Public Improvements Phasing Plan and the Development Agreement.

## 7. Vehicular Circulation

*Do your proposed arterial and collector roadways align with the arterials and collectors of adjacent properties? Do your roadway cross-sections match adjacent cross-sections? If not, explain why.*

- West of Picadilly, all roadways are within the City and County of Denver. The east half of Picadilly road and all roads to the east are within Aurora. Principal and Minor Arterials align to connect with the arterials to the north, south, east, and west. To the east, 48<sup>th</sup> Ave is aligned to connect with 48<sup>th</sup> Ave. in the approved Windler MP. Collectors in Aurora are spaced at half-mile intervals, but to the west in Denver, collectors are not spaced at the same interval. Due to the differences, the road alignments have been aligned to match existing roads within Denver.

See Street Cross Sections on Tab 10.14-10.15.

## 8. Pedestrian Circulation



*Do off-street trails on your site connect with those on adjacent properties?  
Do your cross sections match adjacent cross sections? If not, explain why.*

- Off-street trails within Green Valley Ranch MP are aligned to connect with trails to the west in Green Valley Ranch Denver, including the one along the First Creek Drainage and along Tributary T near 48<sup>th</sup> Avenue. A community trail from the PA-16 open space will cross 52<sup>nd</sup> Ave via a grade separated crossing and extend north into PA-62 and the proposed active adult community. This will link the parks and amenities being provided to this community.
- Trail sections in Green Valley Ranch MP will be constructed to the City of Aurora standards and shall be constructed of concrete in the more urban areas of the community, and in the more natural areas, other materials, such as decomposed granite, may be proposed at the time of Site Plan review. Trails along drainage channels will be constructed according to maintenance road / trail standards of the Urban Drainage and Flood Control District and the P&OSD standards and will be a minimum of 10 feet wide. These trails shall both act as pedestrian trails and maintenance trails. Regional trails outside of the drainage ways will be ten (10) feet wide and community trails shall have a minimum width of eight (8) feet. Refer to the Open Space Plan for regional and community trail locations. Six (6) foot wide minimum neighborhood trails will also be incorporated into the trail network. These trail locations will be determined at Site Plan.
- The proposed Main Street in the commercial area will have a strong pedestrian connection across Tibet Road into the active adult community.

## **9. Protection of Natural Features, Resources and Sensitive Areas.**

*Describe how the development will be designed to protect, use or enhance natural resources and features. In particular, describe how the design of the development will respond to:*

- *Water features, such as floodplains, streams, and arroyos.*
  - Open space is planned along the drainage corridors. This open space becomes part of the open space/trail network that crosses the site linking neighborhoods to parks, a school, and activity centers.

- *Adjacent parks and public open space*
  - There are four (4) neighborhood parks within close proximity to the Open Space Corridor. This corridor begins south off-site from 38<sup>th</sup> Avenue and E-470 extending diagonally, towards 48<sup>th</sup> Avenue and Picadilly Road, within Green Valley Ranch. Two other neighborhood parks are along open space corridors in the active adult community and connect up to this main Tributary T open space.
  
- *Historic or archeological sites*
  - A review of the records of The Colorado Historical Society Office of Archaeology and Historic Preservation "Inventory of Cultural Resources" identified a number of items inventoried on the site, but none were found have significant historic or archaeological value.
  - The majority of these sites occur within the site's drainage areas, which will be enhanced as open space/trail corridors.
  
- *Significant views of the Front Range and views from public parks and I-70 and E- 470 and other collector and arterial streets*
  - Views from public parks and other collector streets west will be protected at strategic points within the development. The use of topography and vegetation will frame scenic vistas.
  
- *Riparian wildlife habitat*
  - There are no true riparian zones along the drainage. There is no flowing water or springs along the drainage, and no channels have developed.
  - Tributary T just east of Picadilly Road in Section 24 has one old mature cottonwood along the drainage corridors. This is also not a true riparian zone since there is no flowing water except after a storm, and there is no definite channel. The understory is an overgrazed pasture with no brushes or willow.
  
- *The approximate topographic form of major ridgelines and swales*
  - There are no major ridgelines or swales. The drainages will be enhanced as a part of the planned community's open space/trail network.
  
- *Natural or geologic hazard areas, including unstable slopes and expansive soils*

- No geologic hazard areas or expansive soils have been identified on the site.
- *Other natural features such as bluffs, ridges, steep slopes, stands of mature trees, rock outcroppings, or wetlands.*
  - Slopes over 6% are primarily found in the drainage areas that will be preserved/ enhanced as open space. There are no bluffs, ridges, or rock outcroppings. There are a few mature trees in and around the drainage areas that will be preserved to the extent possible within the open space areas.

## 10. Neighborhood Concept

*Briefly describe the location of your individual neighborhoods. How have you defined the boundaries for each neighborhood? How are the architectural styles and other design features distributed among the neighborhoods? Are there any styles or other design standards that are restricted to specific areas?*

The Green Valley Ranch Master Plan will be unified community. The architecture is defined by a mix of product types, which vary by location and quantity throughout the entire development which is split into Active Adult north of 48<sup>th</sup> Ave and a more Traditional neighborhood south of 48<sup>th</sup> Ave. When mixed together, these varying types create diverse neighborhoods in both style and affordability.

## 11. Black Forest Ordinance

*Is the Black Forest Ordinance applicable to your site? If so where do the impacted areas show on your exhibits, and how will the requirements of the ordinance be carried out?*

- The Green Valley Ranch site is outside of the Black Forest Ordinance jurisdictional area.

## 12. Steep Slope Standards

*Does your development plan include building on areas with an existing slope of 6% or greater? If so, what standards and design strategies have you adopted to deal with drainage and aesthetic issues? Have you reviewed and considered our recommended steep slope design guidelines? If not, why?*

- Slopes over 6% are primarily located in the drainage areas that are enhanced as open space.

### 13. Consultations with Outside Jurisdictions and Agencies

*Have you consulted with representatives of your local school district, the Colorado Division of Wildlife, the Colorado Department of Public Health and Environment, or other applicable local, state or federal agencies? If so, list the dates, contact person, and results of your discussions. Include any letters you've received from these agencies as an appendix to your application.*

- A number of meetings have been held between representatives of the applicant and the Aurora Public Schools to reach agreement on servicing the Green Valley Ranch Master Plan.

**TAB 8.3**

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
1. Floodway Channel	PA-28	CHANNEL	3.4				Storm flow conveyance. Not Credited towards public land dedication requirement.
	PA-29	CHANNEL	2.0				Storm flow conveyance. Not Credited towards public land dedication requirement.
	PA-30	CHANNEL	2.3				Storm flow conveyance. Not Credited towards public land dedication requirement.
Subtotal			7.7				
2. Required Land Dedication Areas for Park, Schools, & Fire Stations	PA-10	CLUBHOUSE	3.5				Amenity Area and Pool
	PA-11	CLUBHOUSE	1.8				Amenity Area and Pool
	PA-12	SCHOOL-P-8	18.0				Public School P-8
	PA-13	NEIGHBORHOOD PARK	6.2	3.0 ACRES PER 1,000 RESIDENTS			6.2 AC net Credited toward neighborhood park requirement.
	PA-14	NEIGHBORHOOD PARK	5.7	3.0 ACRES PER 1,000 RESIDENTS			5.7 AC net Credited toward neighborhood park requirement.
	PA-15	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-16	OS-D	18.1	7.8 ACRES PER 1,000 RESIDENTS			18.1 AC net Credited toward open space requirement.
	PA-17	OS-D(Corridor)	2.8	7.8 ACRES PER 1,000 RESIDENTS			2.8 AC net Credited toward open space requirement.
	PA-18	OS-D(Corridor)	1.7	7.8 ACRES PER 1,000 RESIDENTS			1.7 AC net Credited toward open space requirement.
	PA-19	OS-D (Corridor)	3.8	7.8 ACRES PER 1,000 RESIDENTS			3.8 AC net Credited toward open space requirement.
	PA-20	OS-D(Corridor)	10.6	7.8 ACRES PER 1,000 RESIDENTS			10.6 AC net Credited toward open space requirement.
	PA-21	OS-D(Corridor)	1.6	7.8 ACRES PER 1,000 RESIDENTS			1.6 AC net Credited toward open space requirement.
	PA-22	OS-D(Corridor)	3.9	7.8 ACRES PER 1,000 RESIDENTS			3.9 AC net Credited toward open space requirement.
	PA-23	OS-D(Corridor)	9.8	7.8 ACRES PER 1,000 RESIDENTS			9.8 AC net Credited toward open space requirement.
	PA-24	OS-D(Corridor)	6.5	7.8 ACRES PER 1,000 RESIDENTS			6.5 AC net Credited toward open space requirement.
	PA-25	DETENTION	5.4				0 AC net Credited toward open space requirement.
	PA-26	DETENTION	6.8				0 AC net Credited toward open space requirement.
	PA-27	DETENTION	2.1				0 AC net Credited toward open space requirement.
		PA-31	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS		
	PA-32	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.

Sheet Title:

**LAND USE MATRIX**

Land Use Map, Matrix and Standard Notes  
Master Plan

Project Title:

**Green Valley Ranch Master Plan Amendment 2**  
Aurora, Colorado

**GREEN VALLEY RANCH**

TAB 8.3

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
2. Required Land Dedication Areas for Park, Schools, & Fire Stations	PA-33	OS-D	0.8	7.8 ACRES PER 1,000 RESIDENTS			0.8 AC net Credited toward open space requirement.
	PA-34	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-35	OS-D	0.4	7.8 ACRES PER 1,000 RESIDENTS			0.4 AC net Credited toward open space requirement.
	PA-36	OS-D	1.1	7.8 ACRES PER 1,000 RESIDENTS			1.1 AC net Credited toward open space requirement.
	PA-37	OS-D	1.0	7.8 ACRES PER 1,000 RESIDENTS			1.0 AC net Credited toward open space requirement.
	PA-38	OS-POCKET PARK	0.9	7.8 ACRES PER 1,000 RESIDENTS			0.9 AC net Credited toward open space requirement.
	PA-39	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-40	OS-POCKET PARK	2.0	7.8 ACRES PER 1,000 RESIDENTS			2.0 AC net Credited toward open space requirement.
	PA-41	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-42	EASEMENT (UTILITY)	0.5				0 AC net Credited toward open space requirement.
	PA-43	EASEMENT (UTILITY)	0.5				0 AC net Credited toward open space requirement.
	PA-44	EASEMENT (MULTI-USE)	1.7				0 AC net Credited toward open space requirement.
	PA-56	OS- POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-57	OS- POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-58	OS-D(Corridor)	1.7	7.8 ACRES PER 1,000 RESIDENTS			1.7 AC net Credited toward open space requirement.
	PA-59	OS-D(Corridor)	1.2	7.8 ACRES PER 1,000 RESIDENTS			1.2 AC net Credited toward neighborhood park requirement.
	PA-60	NEIGHBORHOOD PARK	5.0	7.8 ACRES PER 1,000 RESIDENTS			5.0 AC net Credited toward open space requirement.
	PA-61	OS-D(Corridor)	11.8	7.8 ACRES PER 1,000 RESIDENTS			11.8 AC net Credited toward open space requirement.
	PA-62	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-63	NEIGHBORHOOD PARK	5.3	3.0 ACRES PER 1,000 RESIDENTS			5.3 AC net Credited toward neighborhood park requirement.
PA-64	EASEMENT (MULTI-USE)	6.1				0 AC net Credited toward open space requirement.	
Subtotal			160.2				

Sheet Title:

**LAND USE MATRIX**

Land Use Map, Matrix and Standard Notes  
Master Plan

Project Title:

**Green Valley Ranch Master Plan Amendment 2**  
Aurora, Colorado

**GREEN VALLEY RANCH**

TAB 8.3

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
3a. Development Areas Subzone: R-2 Subarea-C	PA-1	AA, SFD STAND, SFD SMALL	30.2	5.2 DU/AC	241	157	Max. Potential Density is 8 DU/AC
	PA-2	AA, SFD STAND, SFD SMALL, SFA DUPLEX	42.2	5.6 DU/AC	338	236	Max. Potential Density is 8 DU/AC
	PA-3	AA, SFD STAND, SFD SMALL	30.0	5.0 DU/AC	240	150	Max. Potential Density is 8 DU/AC
	PA-4	AA, SFD STAND, SFD SMALL	26.3	4.0 DU/AC	210	105	Max. Potential Density is 8 DU/AC
	PA-5	SFD STAND, SFD SMALL	26.4	4.1 DU/AC	211	108	Max. Potential Density is 8 DU/AC
	PA-6	SFD STAND, SFD SMALL	78.9	5.3 DU/AC	631	418	Max. Potential Density is 8 DU/AC
	PA-7	SFD STAND, SFD SMALL	91.9	5.9 DU/AC	735	542	Max. Potential Density is 8 DU/AC
	PA-8	SFD STAND, SFD SMALL	30.1	6.2 DU/AC	241	186	Max. Potential Density is 8 DU/AC
	PA-9	SFD STAND, SFD SMALL	62.9	6.5 DU/AC	503	408	Max. Potential Density is 8 DU/AC
	PA-45	AA, SFD STAND, SFD SMALL, SFA DUPLEX	26.3	5.0 DU/AC	210	131	Max. Potential Density by code is 5 DU/AC
	PA-46	AA, SFD STAND, SFD SMALL, SFA DUPLEX	39.0	5.0 DU/AC	312	195	Max. Potential Density by code is 5 DU/AC
		RIGHT-OF-WAY	41.8				
Subtotal			526.0				
3b. Development Areas Subzone: MU-A & MU-R	PA-47	AA, SFA, SFD SMALL, SFD STAND, MULTI-FAMILY	15.6	7.0 DU/AC	125	109	Max. Potential Density by Code is 40 DU/AC
	PA-48		22.5	7.0 DU/AC	180	157	Max. Potential Density by Code is 40 DU/AC
	PA-49		19.7	10.0 DU/AC	394	197	Max. Potential Density by Code is 40 DU/AC
	PA-50	SFA, MULTI-FAMILY	57.0	10.0 DU/AC	1026	570	Max. Potential Density by Code is 40 DU/AC
	PA-51		15.3	10.0 DU/AC	275	153	Max. Potential Density by Code is 40 DU/AC
	PA-52		9.6	10.0 DU/AC	173	96	Max. Potential Density by Code is 40 DU/AC
	PA-53	SFA, SFD SMALL, SFD STAND, MULTI-FAMILY	19.6	10.0 DU/AC	353	196	Max. Potential Density by Code is 40 DU/AC
	PA-54		13.7	10.0 DU/AC	247	137	Max. Potential Density by Code is 40 DU/AC
	PA-55		17.2	15.0 DU/AC	310	258	Max. Potential Density by Code is 40 DU/AC
Subtotal			190.2				
<b>SUB AREA TOTAL</b>			<b>884.1</b>		<b>6955</b>	<b>4509</b>	

Sheet Title:

## LAND USE MATRIX

Land Use Map, Matrix and Standard Notes  
Master Plan

---

Project Title:

### Green Valley Ranch Master Plan Amendment 2

Aurora, Colorado

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**GREEN VALLEY RANCH**

TAB 8.3

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
4. Total Map Acreage (Sub-Area Total Above)			884.1				
5. Less 1/2 of Perimeter Streets Not Owned by Applicant			16.3				
6. Applicant's Acreage Listed in Application (Line 4 minus Line 5)			867.8				
7. Total Floodplain Acreage			7.7				
8. Total Adjusted Gross MP Acreage (Line 4 minus Line 7)			876.4				
9. Total Active Adult Planning Areas			232.1	1.58 PERSONS PER UNIT	1856	1240	1960 Estimated Residents
10. Total Single Family Planning Areas			290.2	2.65 PERSONS PER UNIT	2322	1662	4405 Estimated Residents
12. Total Mixed Use Planning Areas			152.1	2.5 PERSONS PER UNIT	2777	1607	4018 Estimated Residents
<b>12. Total Residential</b>			<b>674.4</b>		<b>6955</b>	<b>4509</b>	<b>10383 Estimated Residents</b>
13. Check for avg. residential density in subzone				5 DU's/AC TIMES LINE 8	4382	4509	
14. Small Lot Total				50% of TOTAL UNITS	3478	2255	
15. Check for maximum allowable number of multi-family units							
16. Total Retail Planning Areas			0.0				
17. Total Office Planning Areas			0.0				
18. Total Industrial Planning Areas			0.0				
19. Total Mixed Commercial Planning Areas			190.2				
<b>20. Total Commercial</b>			<b>190.2</b>				
21. Total Neighborhood Parks			31.2	3.0 AC / 1000 RESIDENTS			Required Land Dedication = 31.2 AC. Provided Land Dedication = 31.2 AC.
22. Total Community Parks			0.0	1.1 AC / 1000 RESIDENTS			Requirement of 11.4 AC will be met by applicant cash-in-lieu payment (6.6 AC. Cash-in-lieu payment made as part of Amendment 1) Remaining payment to be made by first residential plat of either PA45-54
23. Total other Credited Open Space including trail corridors, greenbelts, and special rec. sites			82.7	7.8 AC / 1000 RESIDENTS			Required Land Dedication = 81.0 AC. Provided Land Dedication = 82.7 AC.
<b>24. Total Open Space</b>			<b>113.9</b>				<b>Required Land Dedication = 123.6 AC. Provided Land Dedication = 113.9 AC. Provided Cash-In-Lieu Payment = 11.4 AC.</b>

Sheet Title:

**LAND USE MATRIX**

**Land Use Map, Matrix and Standard Notes**

Master Plan

Project Title:

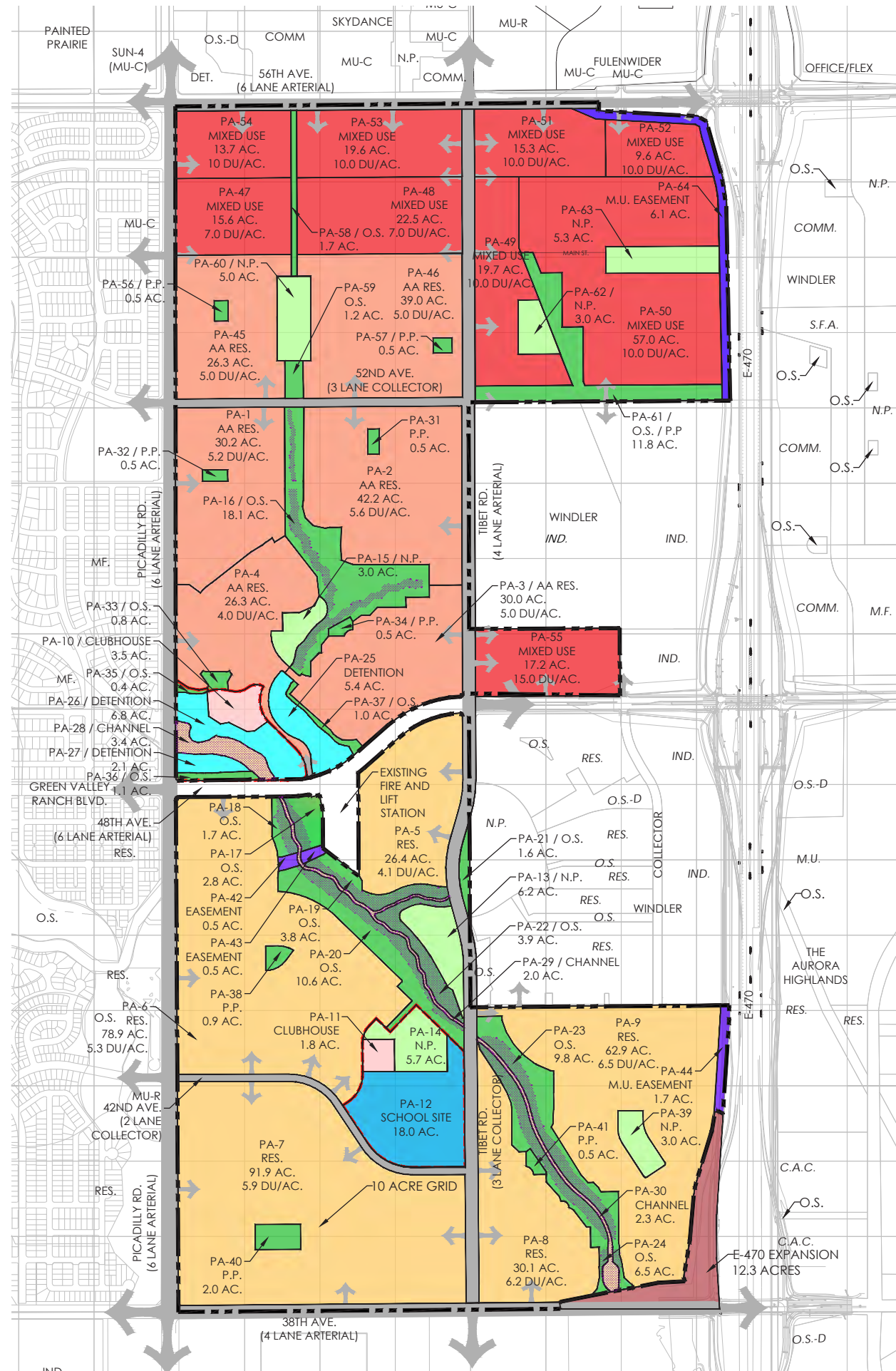
**Green Valley Ranch Master Plan Amendment 2**

Aurora, Colorado

**GREEN VALLEY RANCH**



TAB 8.4



LEGEND

- SINGLE FAMILY RES.
  - ACTIVE ADULT RES.
  - OPEN SPACE
  - DETENTION POND
  - FLOODWAY CHANNEL
  - CLUBHOUSE
  - NEIGHBORHOOD PARK
  - 100 YEAR FLOOD PLAIN
  - SCHOOL SITE
  - ROAD RIGHT OF WAY
  - EASEMENT
  - COMMERCIAL
  - MIXED USE
  - NAC BOUNDARY
- IND = INDUSTRIAL  
 COMM. = COMMERCIAL  
 C.A.C. = COMMUNITY ACTIVITY CENTER  
 MU-C = MULTI USE COMMERCIAL
- O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED



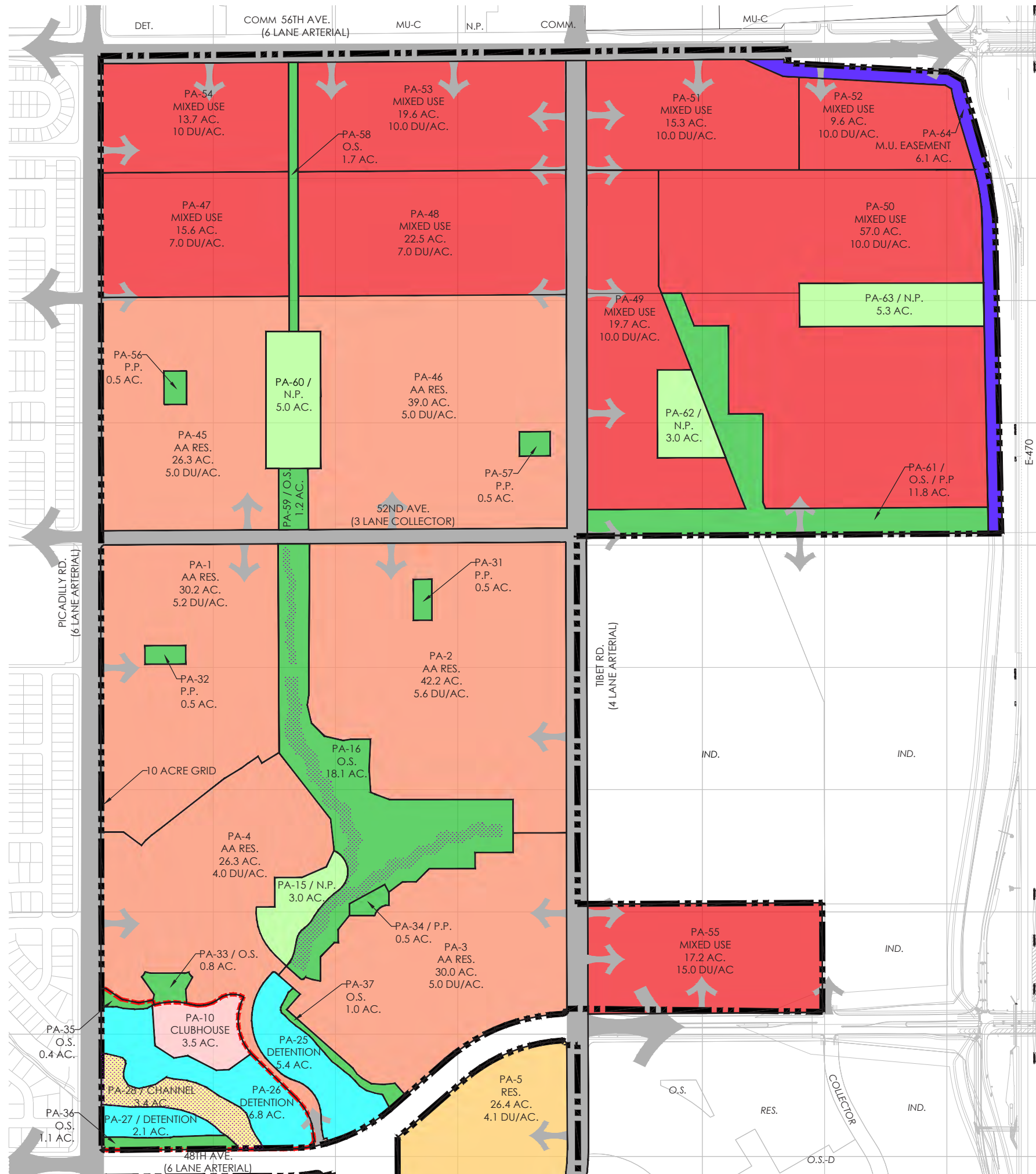
Sheet Title:  
**LAND USE PLAN  
 OVERALL**  
 Land Use Map, Matrix and  
 Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master  
 Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY  
 RANCH**

July 24, 2023

Tab 8.4

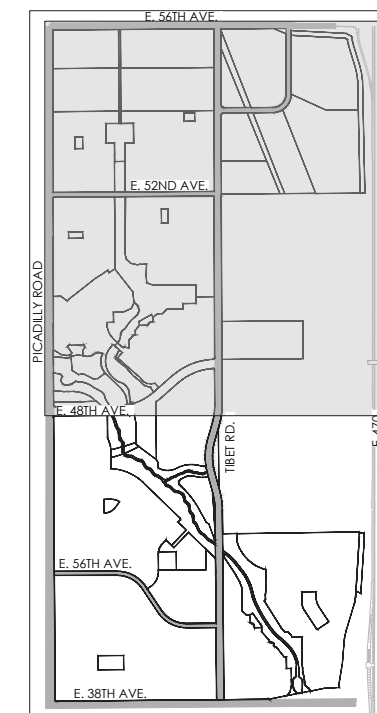


LEGEND

- |                      |                                    |
|----------------------|------------------------------------|
| SINGLE FAMILY RES.   | SCHOOL SITE                        |
| ACTIVE ADULT RES.    | ROAD RIGHT OF WAY                  |
| OPEN SPACE           | EASEMENT                           |
| DETENTION POND       | COMMERCIAL                         |
| FLOODWAY CHANNEL     | MIXED USE                          |
| CLUBHOUSE            | NAC BOUNDARY                       |
| NEIGHBORHOOD PARK    | IND = INDUSTRIAL                   |
| 100 YEAR FLOOD PLAIN | COMM. = COMMERCIAL                 |
|                      | C.A.C. = COMMUNITY ACTIVITY CENTER |
|                      | MU-C = MULTI USE COMMERCIAL        |

O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED

KEY MAP



Sheet Title:  
**LAND USE PLAN SHEET 1**  
 Land Use Map, Matrix and Standard Notes  
 Master Plan

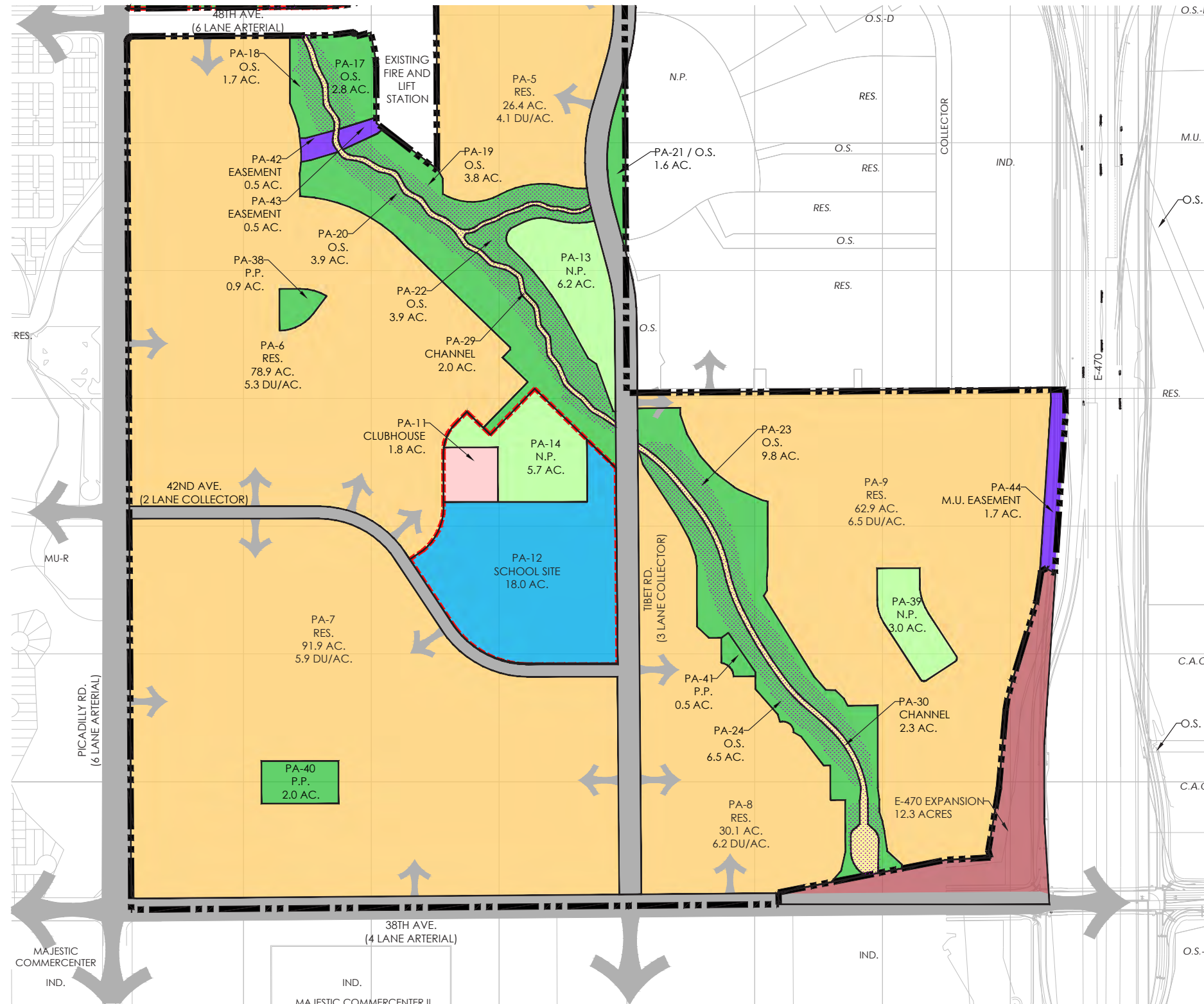
Project Title:  
**Green Valley Ranch Master Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY RANCH**

July 24, 2023

Tab 8.4

TAB 8.4

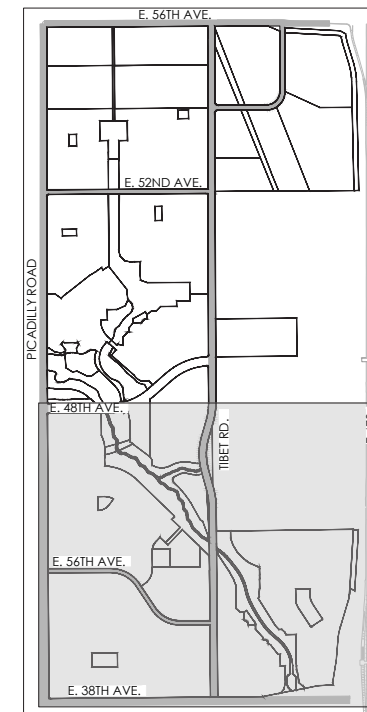


LEGEND

- |                      |                                    |
|----------------------|------------------------------------|
| SINGLE FAMILY RES.   | SCHOOL SITE                        |
| ACTIVE ADULT RES.    | ROAD RIGHT OF WAY                  |
| OPEN SPACE           | EASEMENT                           |
| DETENTION POND       | COMMERCIAL                         |
| FLOODWAY CHANNEL     | MIXED USE                          |
| CLUBHOUSE            | NAC BOUNDARY                       |
| NEIGHBORHOOD PARK    | IND = INDUSTRIAL                   |
| 100 YEAR FLOOD PLAIN | COMM. = COMMERCIAL                 |
|                      | C.A.C. = COMMUNITY ACTIVITY CENTER |
|                      | MU-C = MULTI USE COMMERCIAL        |

- O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED

KEY MAP

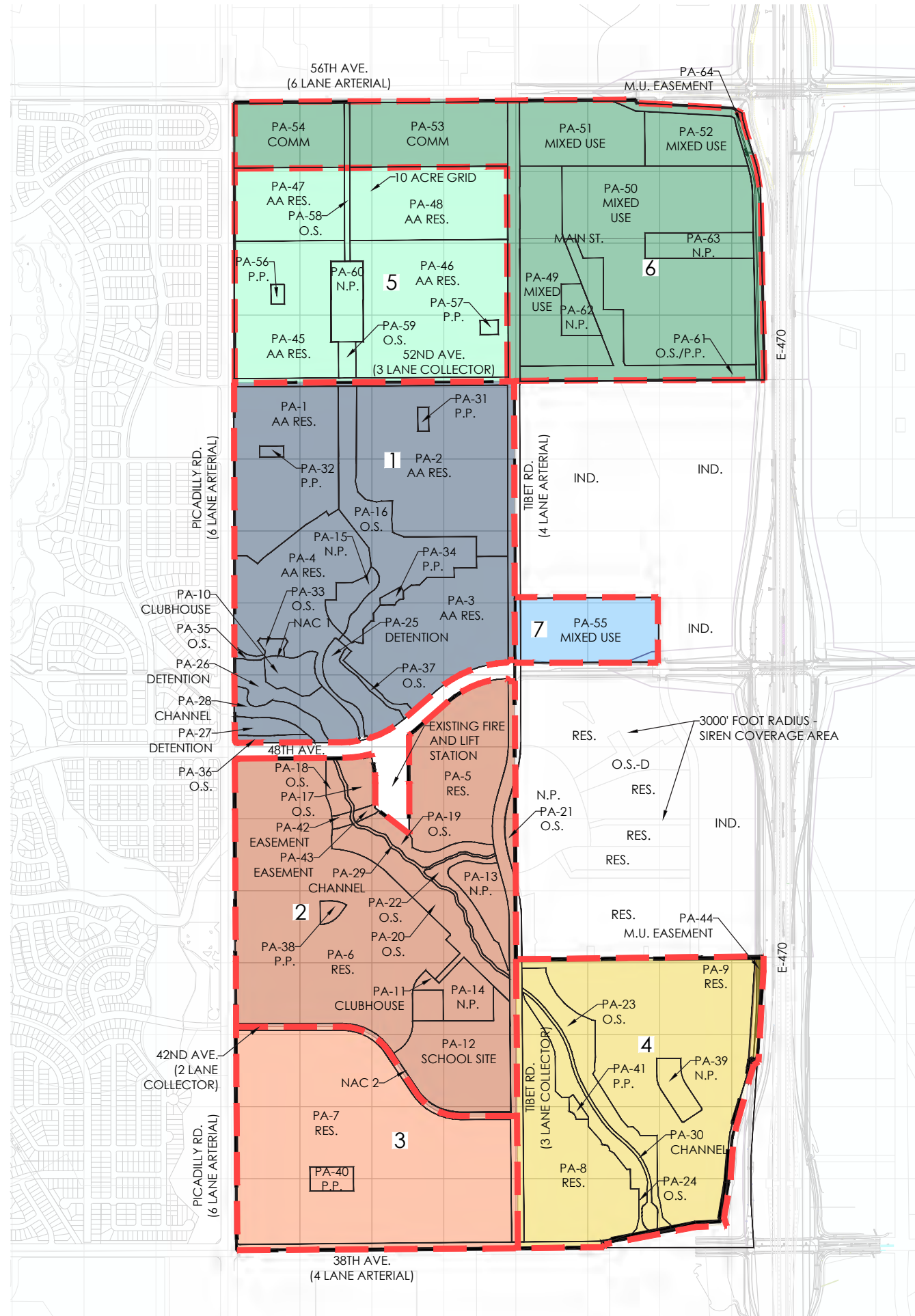


Sheet Title:  
**LAND USE PLAN  
 SHEET 2**  
 Land Use Map, Matrix and  
 Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master  
 Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY  
 RANCH**

TAB 8.5



LEGEND

- NEIGHBORHOOD BOUNDARY
- O.S. = OPEN SPACE
- N.P. = NEIGHBORHOOD PARK
- P.P. = POCKET PARK
- RES. = RESIDENTIAL
- IND. = INDUSTRIAL

Neighborhood	Size (AC)	North Boundary	South Boundary	East Boundary	West Boundary
1	180.7	52nd Ave	48th Ave	Tibet Road	Picadilly Road
2	174.7	48th Ave	42nd Ave	Tibet Road	Picadilly Road
3	101.8	42nd Ave	38th Ave	Tibet Road	Picadilly Road
4	115.1	44th Ave	38th Ave	E-470	Tibet Road
5	114.5	Neighborhood 6	52nd Ave	Tibet Road	Picadilly Road
6	171.3	56th Ave	Windler	E-470	Tibet/Picadilly Road
7	18.1	Windler	48th Ave	Windler	Tibet Road
Total	876.2				

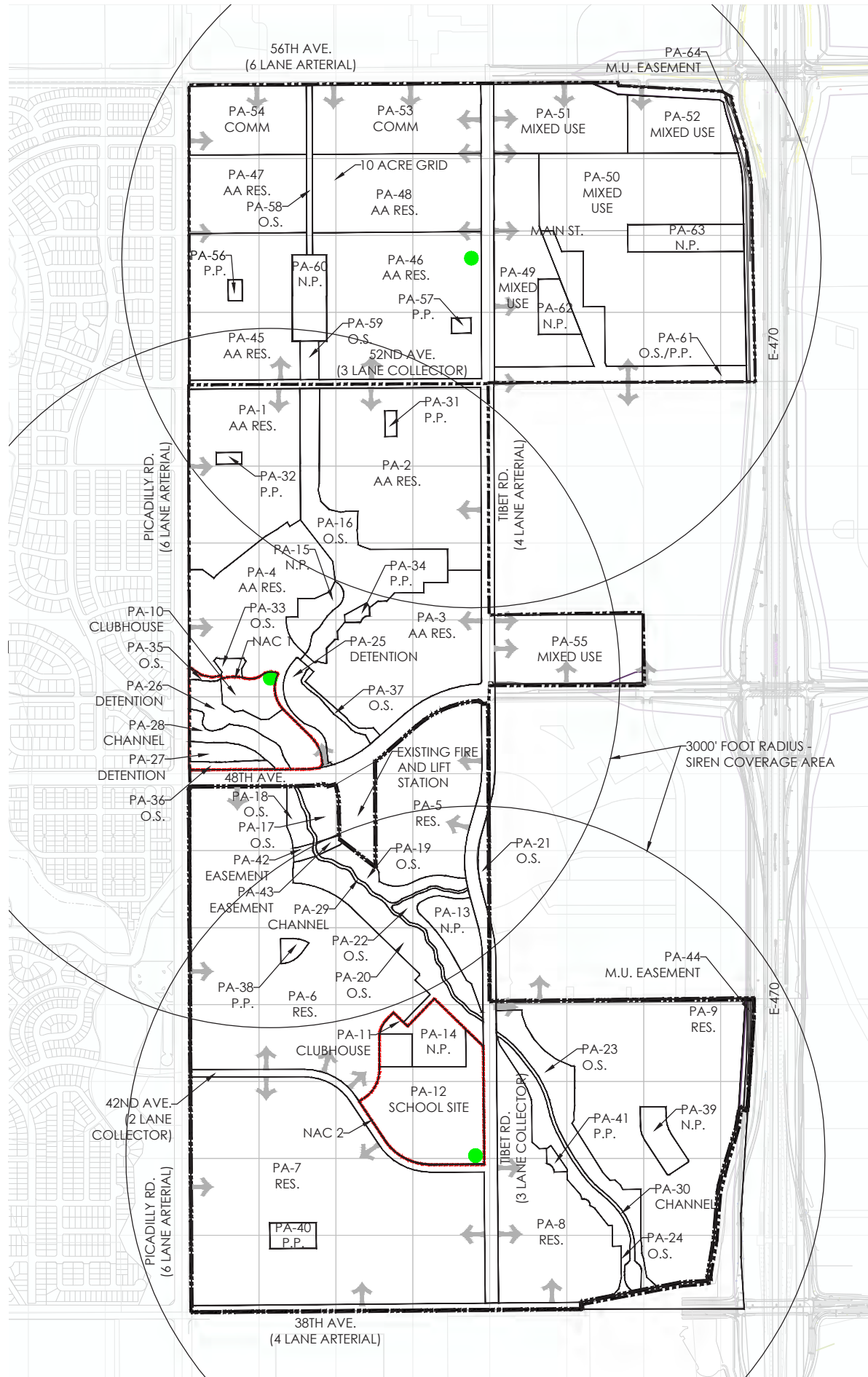


Sheet Title:  
**NEIGHBORHOOD  
 DEFINITION PLAN**  
 Land Use Map, Matrix and  
 Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master  
 Plan Amendment 2**  
 Aurora, Colorado



TAB 8.6



LEGEND

- ➔ PROPOSED ENTRY POINT
- WHELEN ALERT SIREN TOWER LOCATION
- DEDICATED FIRE STATION
- - - PROPERTY LINE
- ▭ NEIGHBORHOOD ACTIVITY CENTER

O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL

STANDARD FIRE NOTES

1. In the event that a permanent fire station is not operational, the Aurora Fire Department may require that a temporary fire station be provided by the developer and/or annexing party. The property has been dedicated to the City and is no less than 1 ¼ acres with the location and dimensions such that optimal emergency response times can be achieved.
2. The City of Aurora requires that a permanent station be platted at the time of development approval. The property has been dedicated to the City and is no less than 1 ¼ acres with the location and dimensions such that optimal emergency response times can be achieved. Shared use sites (police, fire, etc) must be at least 8 acres in size and situated such that optimal emergency response times can be achieved. These sites shall be contiguous to collector streets.
3. Permanent or temporary fire stations: the exact placement of permanent or temporary fire stations will be determined and approved by the city of aurora's fire marshal to insure that coordinated coverage is provided within the city. For specific questions, the fire marshal can be reached through the fire department main switchboard, 303-326-8999, or 303-326-8986 (fax).
4. The FEMA requirement for outdoor emergency warning systems is a 60-70 foot monopole tower using an alert siren. The City of Aurora uses the Whelen Siren System. The land requirement for the tower is a 10' x 10' easement. Each siren covers approximately 3,000 radial feet at 70 db and is typically spaced one siren per square mile.
5. In newly annexed/developing areas of the city, sirens should be sited on every ½ section of ground (320 acres) or 6000 feet apart to provide edge to edge coverage.
6. The exact placement of sirens will be determined by the City of Aurora's Office of Emergency Management to insure that coordinated coverage is provided on a system wide basis. For specific questions, the Office of Emergency Management can be reached as 303-739-7636 (phone), 303-326-8986 (fax), or afd\_oem@auroragov.org



Sheet Title:  
**FIRE AND SAFETY EXHIBIT**  
**Land Use Map, Matrix and Standard Notes**  
 Master Plan

Project Title:  
**Green Valley Ranch Master Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY RANCH**

July 24, 2023

Tab 8.6



**Planning and Zoning Commission  
October 25, 2023**

**1. General Business**

**7a-c. GREEN VALLEY RANCH MASTER PLAN AMENDMENT NO 2 –  
COMPREHENSIVE PLAN AMENDMENT AND ZONING MAP AMENDMENTS**

The applicant, Clayton Properties Group II, is requesting approval of a Comprehensive Plan Amendment to redesignate 78.8 acres from City Corridor Placetype to Emerging Neighborhood Placetype to support development in the proposed Green Valley Ranch Master Plan (GVRMP). Additionally, they are requesting to rezone 78.8 acres from Mixed-Use Airport (MU-A) to Medium Density Residential (R-2) and 28.3 acres from Mixed-Use Regional (MU-R) to Mixed-Use Airport (MU-A). The subject property is located south of 56<sup>th</sup> Avenue, between Picadilly Road and E-470, and is undeveloped. The site is included in the proposed Green Valley Ranch Master Plan Amendment 2.

The applicant proposes to amend the Comprehensive Plan to support the future development within the GVRMP, which consists of approximately 884 acres and is located between Picadilly Road and E-470 and E. 56<sup>th</sup> Avenue and E. 38<sup>th</sup> Avenue. The Comprehensive Plan amendment area, specifically located between E. 54<sup>th</sup> Avenue and E. 52<sup>nd</sup> Avenue, is designated City Corridor, and is bounded by City Corridor Placetype to the north and east, and Emerging Neighborhood to the south. The City and County of Denver is located west of Picadilly Road. The purpose of this request is to allow single-family residential uses, enabling the applicant to expand the existing active adult residential community located south of E. 52<sup>nd</sup> Avenue.

The applicant also proposes Zoning Map Amendments for two areas. The first area consists of 78.8 acres located between E. 54<sup>th</sup> Avenue and E. 52<sup>nd</sup> Avenue, west of Tibet. The applicant requests to rezone from MU-A to R-2. The proposed R-2 zone district will enable the applicant to develop more than 50% of the area with residential uses, which is a requirement in the existing MU-A zoning. The second area includes 28.3 acres located east of Tibet Road and proposes to rezone MU-R to MU-A to allow single-family residential in addition to commercial, retail, and office.

The subject property is included in the Green Valley Ranch Master Plan area, located west of E-470 to Picadilly Road, between E. 56<sup>th</sup> Avenue and E. 38<sup>th</sup> Avenue. The Master Plan was initially approved in 2008 and is being amended to update the proposed land uses for the subject property.

One-hundred five (105) adjacent property owners and seven (7) registered neighborhood organizations were notified of the application. No comments were received regarding the proposed amendments. No neighborhood meeting was held. No comments have been received as a result of the Planning and Zoning Commission Public Hearing Notice and signposting.



**Planning and Zoning Commission  
October 25, 2023**

**Testimony Given at the Hearing:**

Deborah Bickmire, Case Manager, gave a presentation of the item, including the staff recommendation.

Commissioner Hogan asked staff whether the project was within the Airport Influence Zone.

Ms. Bickmire confirmed that it is in the Airport Influence Zone and there is an avigation easement for the subject property.

Commissioner Hogan questioned if property owners would be notified that they live within an Airport Influence Zone.

Ms. Bickmire confirmed notifications would take place and commented that additional mitigation is required in the construction of the homes to accommodate noise that may impact the property from the airport.

Layla Rosales, Terracina Design, 10200 E Girard Avenue, Denver, CO 80231, the agent representing the applicant, gave a presentation of the item. Ms. Rosales spoke to the overall Green Valley Ranch Master Plan which will include 3,000 home sites. Ms. Rosales described the proposed amendment which is intended to expand residential and allow a transition to commercial uses through zoning map amendments.

Dave Carro, Oakwood Homes, 4908 Tower Road, Denver, CO 80249, applicant, was available for questions.

Brandon Wyszynski, Oakwood Homes, 4908 Tower Road, Denver, CO 80249, applicant, was available for questions.

Mike Weiher, Terracina Design, 10200 E Girard Avenue, Denver, CO 80231, agent representing the applicant, was available for questions.

The Planning Commission had no further questions.

There was no public comment.

**Planning Commission Results**

**AGENDA ITEM 7a – COMPREHENSIVE PLAN AMENDMENT**

A MOTION WAS MADE BY COMMISSIONER BANKA AND SECONDED BY COMMISSIONER GAISER.

MOVE TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE COMPREHENSIVE PLAN AMENDMENT FROM CITY CORRIDOR TO EMERGING NEIGHBORHOOD BECAUSE THE PROPOSAL COMPLIES WITH THE CRITERIA IN SECTION 146-5.4.1.A.3 OF THE UNIFIED DEVELOPMENT ORDINANCE FOR THE FOLLOWING REASONS:



**Planning and Zoning Commission  
October 25, 2023**

1. IT SUPPORTS THE PRACTICE OF RESERVING IDEAL LOCATIONS FOR SIGNIFICANT AND STRATEGIC COMMERCIAL DEVELOPMENT.
2. IT SUPPORTS THE GOAL OF INCREASING HIGH-QUALITY HOUSING OPTIONS OF ALL TYPES AND AT ALL PRICE LEVELS THROUGHOUT THE CITY THROUGH ONGOING COLLABORATION WITH THE DEVELOPMENT COMMUNITY.
3. THE AMENDMENT SUPPORTS THE GOAL OF USING HIGH-QUALITY COMMUNITY DESIGN TO CREATE VIBRANT AND ACTIVE PLACES WHERE PEOPLE CHOOSE TO LIVE AND WORK.

**Further Discussion:**

No further discussion occurred.

MOTION PASSED UNANIMOUSLY

**AGENDA ITEM 7b – ZONING MAP AMENDMENT**

A MOTION WAS MADE BY COMMISSIONER JETCHICK AND SECONDED BY COMMISSIONER BUSH.

MOVE TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE ZONING MAP AMENDMENT TO REZONE 78.8 ACRES FROM MIXED-USE AIRPORT (MU-A) TO MEDIUM DENSITY RESIDENTIAL (R-2) BECAUSE THE PROPOSAL COMPLIES WITH THE CRITERIA IN SECTION 146-5.4.1.C.3 OF THE UNIFIED DEVELOPMENT ORDINANCE FOR THE FOLLOWING REASONS:

1. IT SUPPORTS AURORA'S ECONOMY AND BUSINESS INTEGRATED WITH EMERGING NEIGHBORHOODS AS OUTLINED WITHIN THE COMPREHENSIVE PLAN.
2. IT IS ALIGNED WITH THE PROPOSED GREEN VALLEY RANCH MASTER PLAN AND ITS VISION FOR A MIXED-USE AND DIVERSE COMMUNITY PROVIDING OPPORTUNITIES TO WORK AND LIVE WITHIN THE AREA.
3. THE ZONING MAP AMENDMENT DOES NOT CHANGE THE USES PROPOSED WITHIN THE GREEN VALLEY RANCH MASTER PLAN THAT HAS BEEN DRAFTED TO MITIGATE COMPATIBILITY ISSUES THAT MIGHT ARISE WITH SURROUNDING DEVELOPMENT; AND,
4. IT WILL NOT CREATE ANY DISLOCATIONS OF TENANTS OR OCCUPANTS OF THE PROPERTY.

**Further Discussion:**

Commissioner Walls expressed support for the requested zoning map amendment.

MOTION PASSED UNANIMOUSLY





**Planning and Zoning Commission  
October 25, 2023**

**AGENDA ITEM 7c – ZONING MAP AMENDMENT**

A MOTION WAS MADE BY COMMISSIONER HOGAN AND SECONDED BY COMMISSIONER BANKA.

MOVE TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE ZONING MAP AMENDMENT TO REZONE 28.3 ACRES FROM MIXED-USE REGIONAL (MU-R) TO MIXED-USE AIRPORT (MU-A) BECAUSE THE PROPOSAL COMPLIES WITH THE CRITERIA IN SECTION 146-5.4.1.C.3 OF THE UNIFIED DEVELOPMENT ORDINANCE FOR THE FOLLOWING REASONS:

1. IT SUPPORTS AURORA'S ECONOMY AND BUSINESS INTEGRATED WITH EMERGING NEIGHBORHOODS AS OUTLINED WITHIN THE COMPREHENSIVE PLAN.
2. IT IS ALIGNED WITH THE PROPOSED GREEN VALLEY RANCH MASTER PLAN AND ITS VISION FOR A MIXED-USE AND DIVERSE COMMUNITY PROVIDING OPPORTUNITIES TO WORK AND LIVE WITHIN THE AREA.
3. THE ZONING MAP AMENDMENT DOES NOT CHANGE THE USES PROPOSED WITHIN THE GREEN VALLEY RANCH MASTER PLAN THAT HAS BEEN DRAFTED TO MITIGATE COMPATIBILITY ISSUES THAT MIGHT ARISE WITH SURROUNDING DEVELOPMENT; AND,
4. IT WILL NOT CREATE ANY DISLOCATIONS OF TENANTS OR OCCUPANTS OF THE PROPERTY.

**Further Discussion:**

No further discussion occurred.

MOTION PASSED UNANIMOUSLY

ORDINANCE NO. 2023- \_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING THE 2018 COMPREHENSIVE PLAN TO CHANGE THE PLACETYPE FROM CITY CORRIDOR TO EMERGING NEIGHBORHOOD FOR THE AREA LOCATED SOUTH OF 56<sup>TH</sup> AVENUE, BETWEEN PICADILLY ROAD AND E-470 (GREEN VALLEY RANCH COMPREHENSIVE PLAN AMENDMENT EMERGING NEIGHBORHOOD)

WHEREAS, Section 146-5.4.1.A of the Uniform Development Ordinance provides for the adoption of a Comprehensive Plan for the orderly development and redevelopment of the City of Aurora, Colorado (the “City”), and that this plan shall serve to guide the City Council and the Planning and Zoning Commission in their decisions and recommendations in all land use decisions within the City; and

WHEREAS, on October 8<sup>th</sup>, 2018, the City Council passed Ordinance 2018-37 adopting the 2018 Aurora Comprehensive Plan (the “Comprehensive Plan”); and

WHEREAS, the Comprehensive Plan establishes a land use map providing varying placetypes for city design; and

WHEREAS, on October 25, 2023, following a public hearing, the Planning and Zoning Commission voted to recommend approval of an amendment to the Comprehensive Plan which would allow the Placetype Emerging Neighborhood un an area currently designated as the Placetype City Corridor; and

WHEREAS, Section 146-5.4.1.A of the Uniform Development Ordinance provides that City Council may amend the Comprehensive Plan by an ordinance approved by a vote of not less than two-thirds of the entire membership of the City Council, if they find that the amendment promotes the long term economic, social, and environmental health of the City, and that it protects the public health, safety and welfare of the citizens of Aurora.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Aurora Comprehensive Plan is hereby amended to allow for the Placetype Emerging Neighborhood in an area currently designated as the Placetype City Corridor.

Section 2. The amendment to the Comprehensive Plan shall be in the form as filed with the Office of the City Clerk and presented to the City Council at tonight’s meeting.

Section 3. All ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 4. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_ day of \_\_\_\_\_, 2023.

PASSED AND ORDERED PUBLISHED this \_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

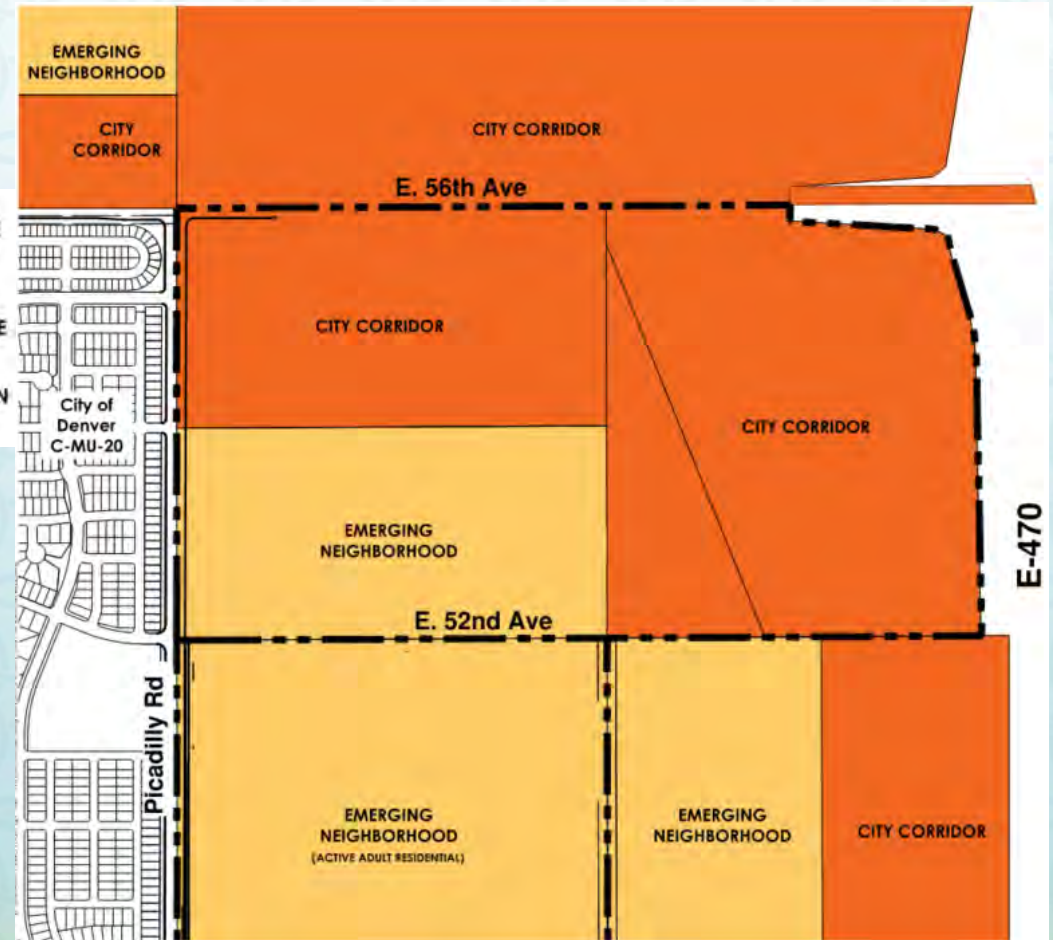
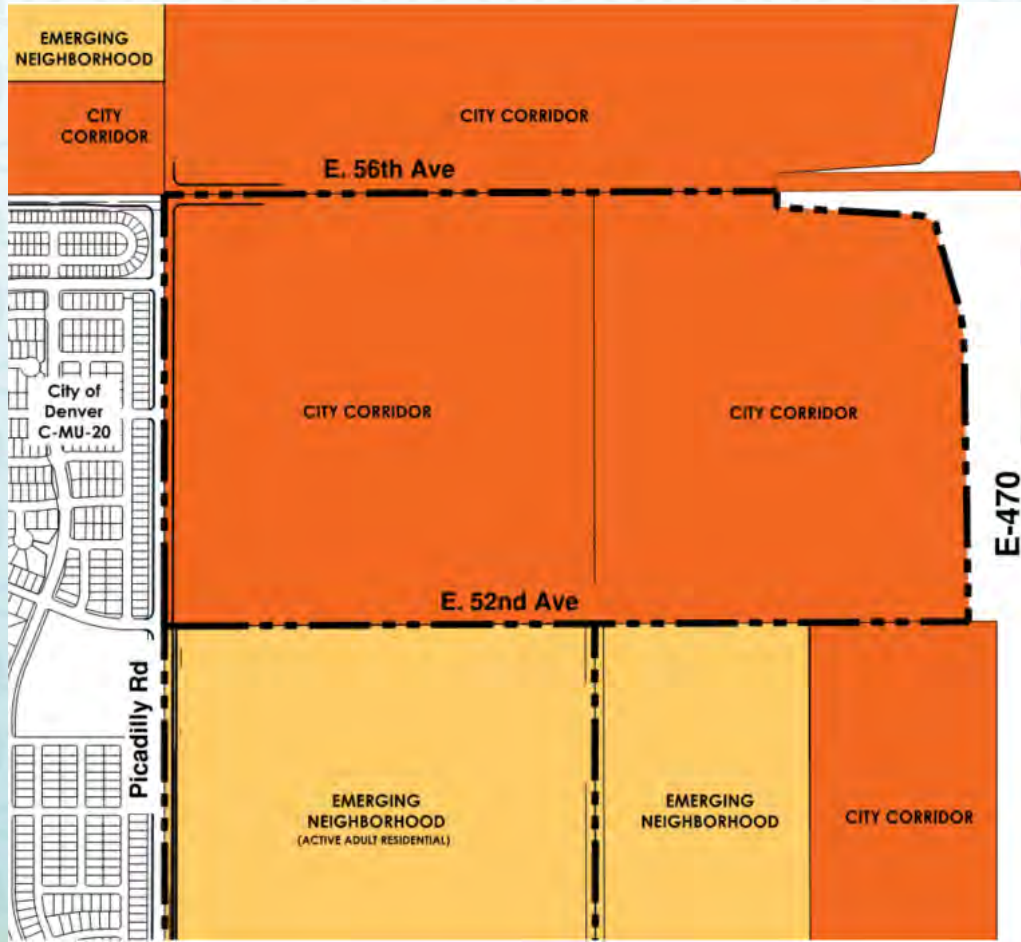
*Lena McClelland*<sup>RLA</sup>

\_\_\_\_\_  
LENA MCCLELLAND, Assistant City Attorney

# VICINITY MAP



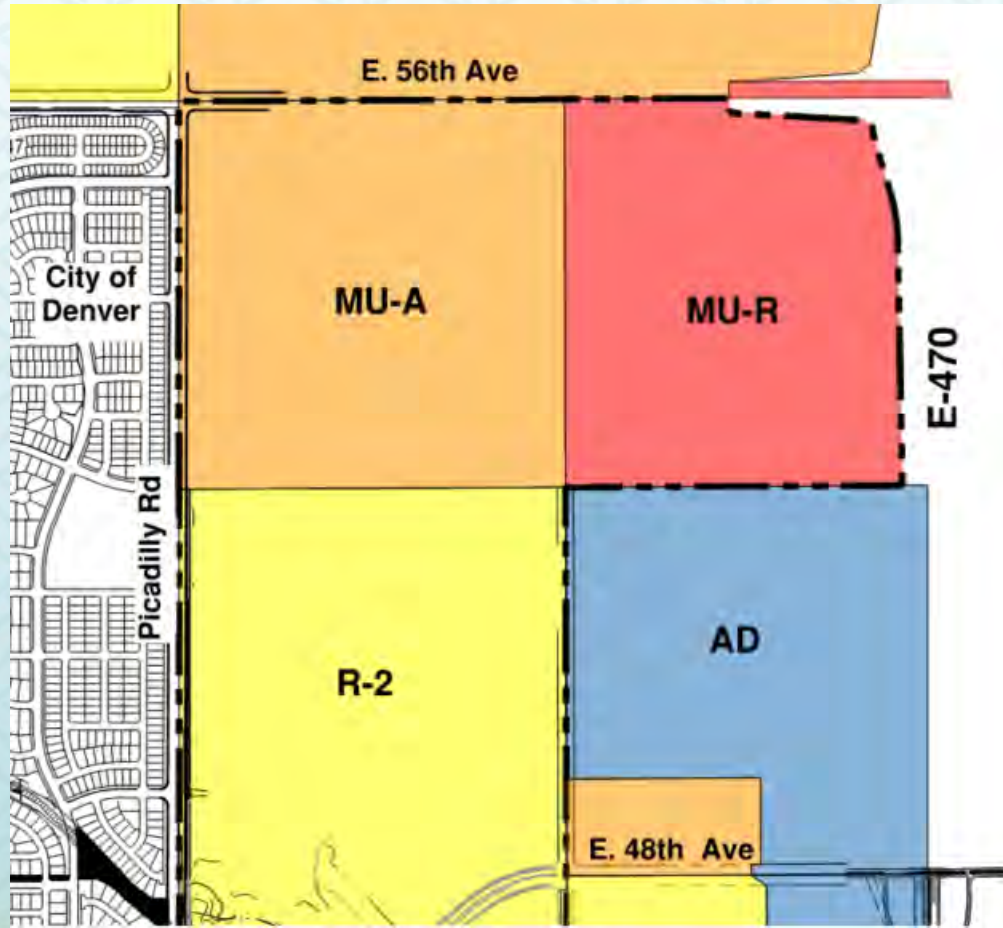
# AURORA PLACES PLACETYPES



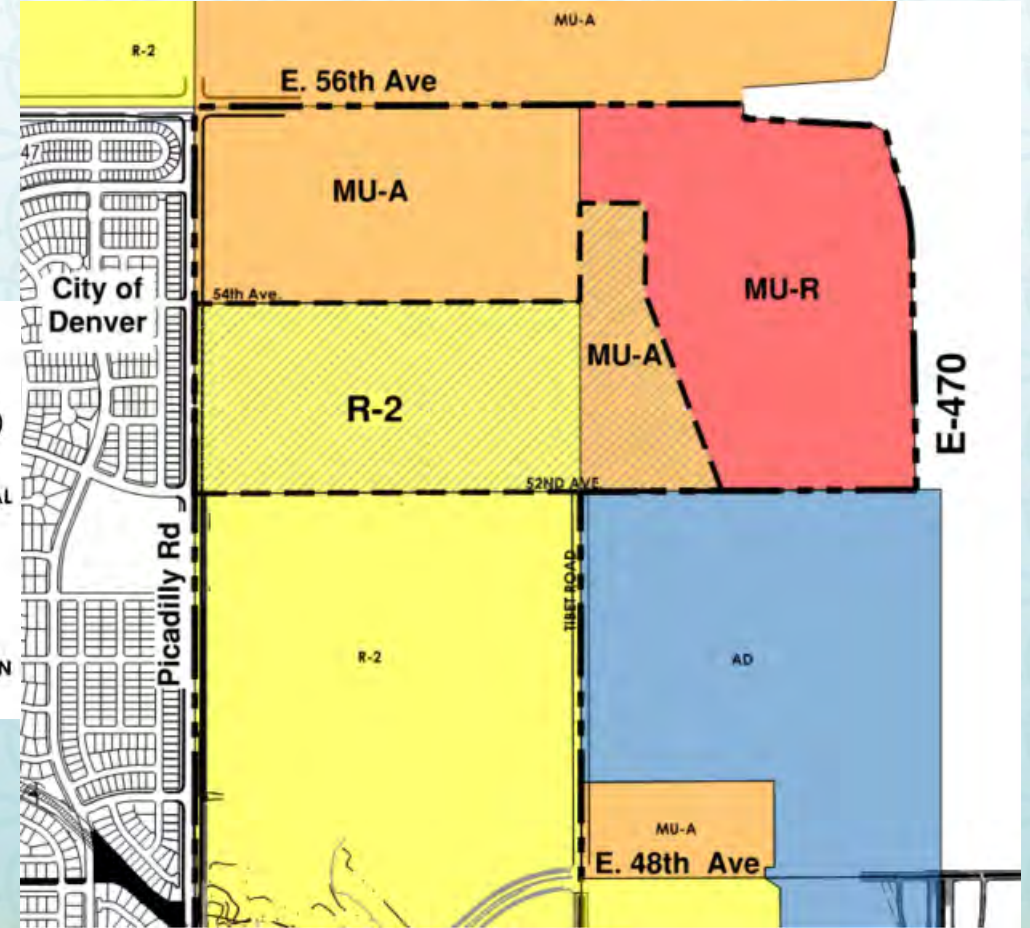
EXISTING

PROPOSED

# ZONING MAPS



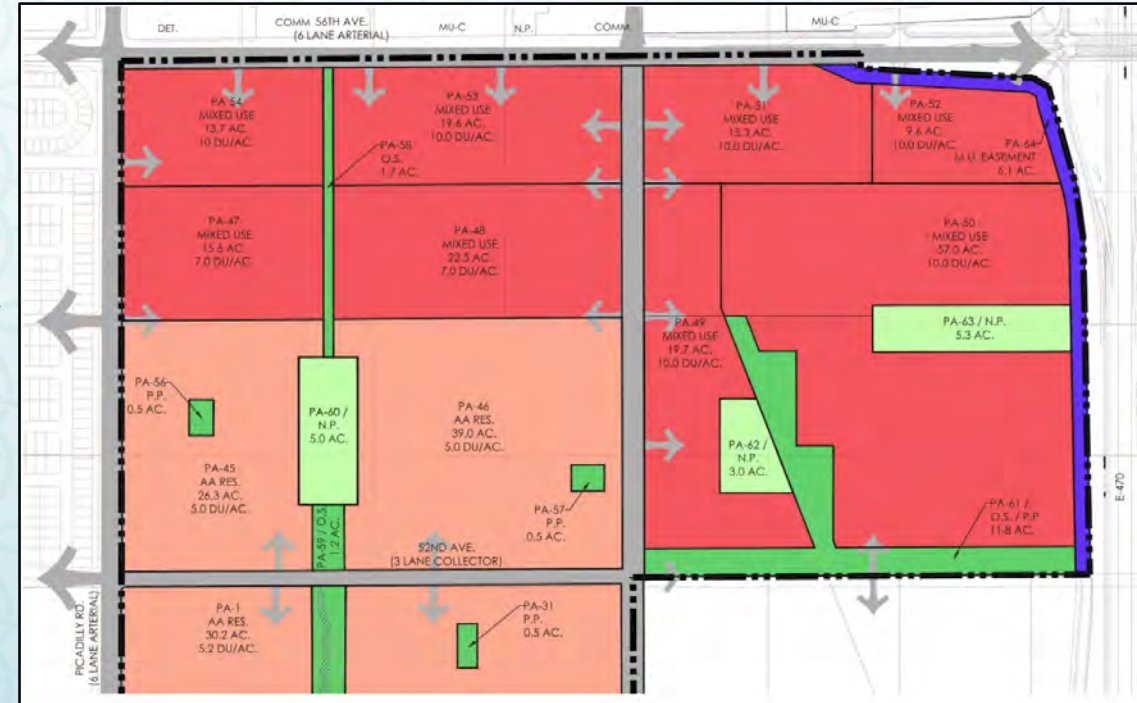
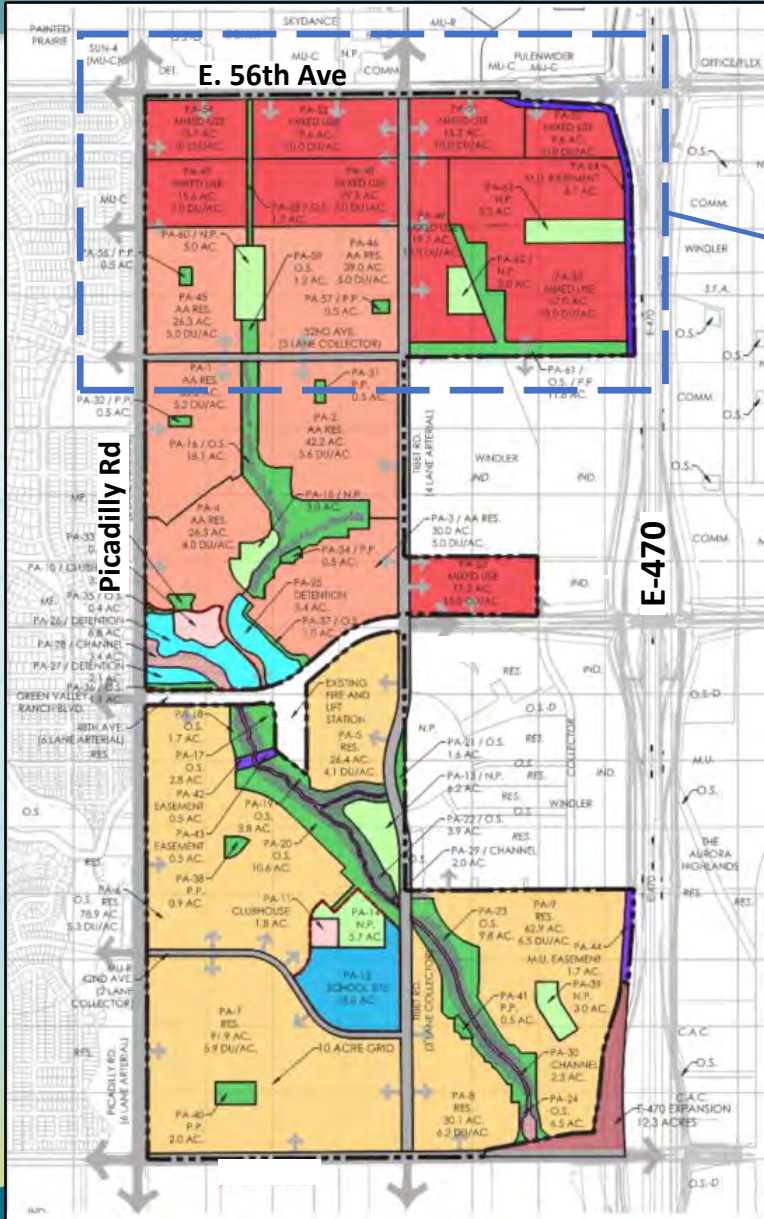
- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS



EXISTING

PROPOSED

# GREEN VALLEY RANCH MASTER PLAN









# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Green Valley Ranch Zoning Map Amendment – MU-A to R-2
<b>Item Initiator:</b> Deborah Bickmire, Senior Planner, Planning and Development Services
<b>Staff Source/Legal Source:</b> Deborah Bickmire, Senior Planner / Lena McClelland, Assistant City Attorney - Planning
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 5.0--Be a great place to locate, expand and operate a business and provide for well-planned growth and development

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 11/27/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** 12/4/2023

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REZONE A PARCEL OF LAND MEASURING 78.8 ACRES MORE OR LESS AT THE NORTHEAST CORNER OF PICADILLY ROAD AND FUTURE E. 52ND AVENUE, FROM MIXED USE-AIRPORT DISTRICT (MU-A) TO MEDIUM DENSITY RESIDENTIAL DISTRICT (R-2) AND AMENDING THE ZONING MAP ACCORDINGLY (GREEN VALLEY RANCH ZONING MAP AMENDMENT – MU-A TO R-2)

Deborah Bickmire, Senior Planner, Planning and Development Services / Lena McClelland, Assistant City Attorney, City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

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**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Planning and Zoning Commission

**Policy Committee Date:** 10/25/2023

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval
- Forwarded Without Recommendation  Minutes Not Available
- Minutes Attached

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The Planning and Zoning Commission heard **the applicant's request for a Zoning Map Amendment in a public** hearing on October 25, 2023 and voted unanimously (6-0) to recommend approval to City Council. Commissioner Ahern was absent.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

The applicant, Clayton Properties Group II, is requesting approval to rezone 78.8 acres from Mixed Use-Airport (MU-A) to Medium Density Residential (R-2). The subject property is located south of 54th Avenue, north of future E. 52nd Avenue, between Picadilly Road and N. Tibet Road. The site is included in the proposed Green Valley Ranch Master Plan Amendment 2 (GVRMP) and is undeveloped. This is one of two proposed rezoning requests.

The applicant proposes the rezone to support future development within the GVRMP, which consists of approximately 884 acres and is located between Picadilly Road and E-470 and E. 56th Avenue and E. 38th Avenue. The current MU-A zoning north of E. 52<sup>nd</sup> Avenue allows a mix of uses including commercial retail, office, and residential, and both districts permit various single family and multifamily residential development; however, no more than 50% of the MU-A area may include residential uses. The proposed R-2 district will allow development that is consistent with the surrounding area, however, commercial uses will not be permitted. The purpose of this request is to enable the applicant to expand the existing active adult residential community located south of E. 52nd Avenue. The proposed zoning still supports a transition to higher density residential and mixed uses to develop along the adjacent street corridors.

The proposed Zoning Map Amendment complies with the approval criteria found in Section 146-4.5.1.C.3 because it supports Aurora's economy and business integrated with emerging neighborhoods as outlined within the Comprehensive Plan; it is aligned with the proposed Green Valley Ranch Master Plan and its vision for a mixed-use and diverse community providing opportunities to work and live within the area; the zoning map amendment does not change the uses proposed within the Green Valley Ranch Master Plan that has been drafted to mitigate compatibility issues that might arise with surrounding development; and, it will not create any dislocations of tenants or occupants of the property.

---

**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact  
 Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does council wish to approve the proposed zoning map amendment?

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**LEGAL COMMENTS**

The City Council is the governing body of the City and has the authority to approve the Official Zoning Map and amendments to that map. (UDO §146-5.1.1.B)

The City Council shall conduct a public hearing on the application. (UDO §146-5.4.1.C.2.c)

Changes to the Zoning Map for individual parcels shall only be approved if City Council finds that the change to the Zoning Map is required because of changed conditions or circumstances on the property or the surrounding area and (a) the applicant has demonstrated that the proposed rezoning is consistent with the spirit and intent of the Comprehensive Plan, the other policies and plans adopted by the City Council, and with the purpose statement of the proposed new zone district(s); (b) the applicant has demonstrated that the size, scale, height, density, and multi-modal traffic impacts of the proposed rezoning are compatible with surrounding development or can be made compatible through approval conditions; and (c) the application demonstrates that the change in zoning will not create significant dislocations of tenants or occupants of the property, or that any impacts are outweighed by other public benefits or progress toward other Comprehensive Plan goals that would be achieved by approval of the application. (UDO §146-5.4.1.C.3.a.ii).

Membership of City Council will change prior to final reading of this item. Council Members should be cautious about voting on items if they were not present at the public hearing. If a Council Member wishes to vote on an item for which they were not present at the public hearing they should thoroughly review the record, including the minutes, any video, and recordings, if available. If the Council Member does not believe they are able to review the entire record from the public hearing they should refrain from voting and abstain. In that case, there will be one less vote available for approval. (McClelland)

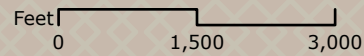


**Green Valley Ranch East  
Comprehensive Plan Amendment and  
Zoning Map Amendments**

City of Aurora, Colorado



*Aurora is  
Worth Discovering!*



**Planning &  
Development Services**  
15151 E. Alameda Parkway  
Aurora CO 80012 USA  
AuroraGov.org  
303.739.7217  
GIS@auroragov.org



October 17, 2023

## **Green Valley Master Plan – Comprehensive Plan Amendment and Zoning Map Amendment Request**

On behalf of Clayton Properties Group II, Inc., we are pleased to submit our proposed Second Amendment to the Green Valley Ranch Master Plan (MP), Comprehensive Plan Amendment and Rezone for the City of Aurora's review.

The Green Valley Ranch MP (formerly Framework Development Plan) was approved in November of 2008 for 2,500 acres. The MP was amended in 2018 to modify the land uses and open space on 588 acres located between 38<sup>th</sup> Avenue and 52<sup>nd</sup> Avenue west of E-470 (Amendment 1). Amendment 2 proposes modified planning areas on the 301 acres located between Picadilly Road and E-470; and 56<sup>th</sup> Avenue and 52 Avenue. This Amendment revises the total MP area from approximately 2,500 acres to 884.1 acres.

The Green Valley Ranch MP is located between Picadilly Road to the west, and E-470 to the east and between 38<sup>th</sup> Ave to the south, and 56<sup>th</sup> Ave to the north. The Comprehensive Plan designates the area between 38<sup>th</sup> Ave. and 52<sup>nd</sup> Ave. as Emerging Neighborhood placetype, and City Corridor placetype between 52<sup>nd</sup> Ave. and 56<sup>th</sup> Ave. The site is bordered by City Corridor placetype to the north of 56<sup>th</sup> Ave, Industry Hub placetype south of 38<sup>th</sup> Ave., City Corridor to the east across E-470, and City and County of Denver to the west. See Exhibit A for existing placetypes.

The applicant is requesting to amend the Comprehensive Plan to re-designate 78.8 acres from City Corridor to Emerging Neighborhood. The area is bounded by Picadilly Road along the west, Tibet Road along the east, 52<sup>nd</sup> Ave to the south, and 54<sup>th</sup> Ave to the north. This amendment is proposed to better align with the proposed uses that will have an emphasis on residential. Our intent is to extend the active adult community to the north while maintaining the City Corridor placetype along the 56<sup>th</sup> Ave. corridor for commercial development that will support both nearby residential communities and mixed-use areas. An open space corridor will act as a link between the active adult communities while also including a neighborhood park. The City Corridor placetype will include a wide range of uses, including commercial, retail, office, institutional, and multifamily residential consistent with that zoning. See Exhibit B for proposed placetypes.

The proposed comprehensive plan amendment stays consistent with intent of the existing placetypes by maintaining City Corridor along 56<sup>th</sup> Ave., a major arterial, and E-470. The extension of Emerging Neighborhood north of 52<sup>nd</sup> Ave. is compatible with the existing Active Adult neighborhood south of 52<sup>nd</sup> Ave as well as the single-family residential neighborhoods to the west in the City and County of Denver.

## Green Valley Master Plan – Rezone Request

We are also requesting to rezone two parcels located between Picadilly Rd. and E470, and north of 52<sup>nd</sup> Ave to 56<sup>th</sup> Ave.

We are requesting to modify 78.8 Ac. located from Picadilly Road to Tibet Road and 52<sup>nd</sup> Ave to 56<sup>th</sup> Ave, from Mixed-Use Airport (MU-A) to Medium Density Residential (R-2) zone district. This will allow for the expansion of the active adult neighborhood to meet market demand. See Exhibit D for proposed zoning.

We are also requesting to amend the zoning for 28.3 acres from Mixed Use Regional (MU-R) to Mixed Use Airport (MU-A). This area is located east of Tibet Road to the CIG easement, between 52<sup>nd</sup> Ave and 55<sup>th</sup> Ave. We are requesting to change this to MU-A zone district to allow for single family detached homes east of Tibet Road. This would allow for a more diverse residential neighborhood who will ultimately be the main users of the surrounding mixed-use area.

The site is bordered by MU-A (Mixed Use-Airport) to the north, R-2 (Medium Density Residential) to the south, and MU-R (Mixed Use-Regional) to the east (of E-470). See Exhibit C for existing zoning.

We believe the proposed zoning is compatible with the surrounding zoning districts by maintaining MU-R and MU-A along 56<sup>th</sup> and E-470 for regional commercial, retail and service uses. Residential single-family and multi-family uses are permitted as part of the overall mix of uses in the MU-A zoning district. The extension of R-2 north of 52<sup>nd</sup> Ave. is compatible with the existing residential uses to the south as well as the single-family residential neighborhoods to the west in Denver. 52<sup>nd</sup> Ave will be classified as a collector street that connects Picadilly Road to Tibet Road which will enhance connectivity thru the site.

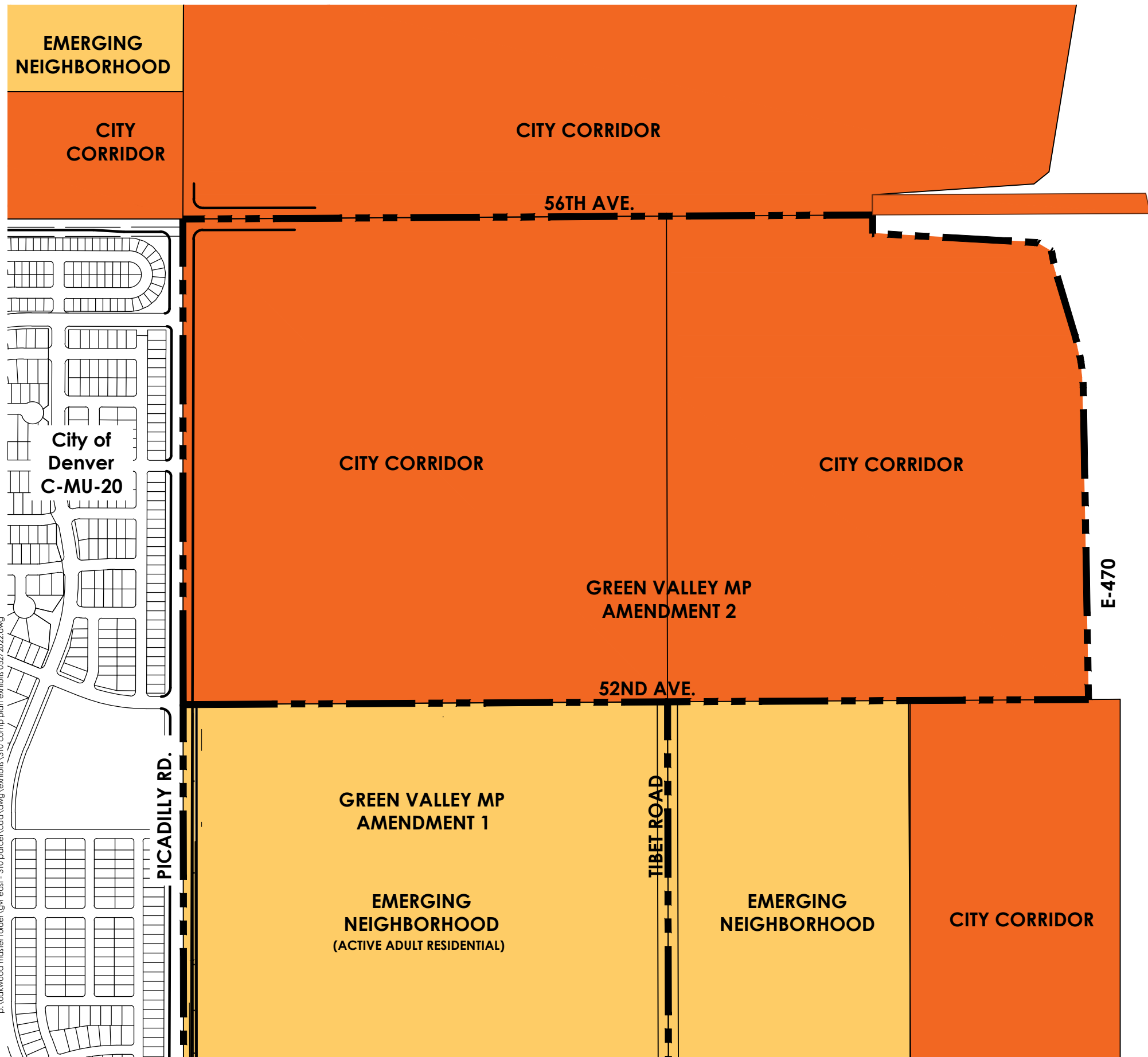
### *Conformance with Rezone Criteria:*

- i. *The change to the Zoning Map is needed to correct an error (change in the character of surrounding areas does not constitute an error in the map); or*
    - There is no error
  - ii. *The change to the Zoning Map is required because of changed conditions or circumstances on the property or in the surrounding area and:*
    - More demand for residential development and less demand for commercial and office space. This rezone request is in response to the changing demands within the region.
- a. *The applicant has demonstrated that the proposed initial zoning or rezoning is consistent with the spirit and intent of the Comprehensive Plan, with other policies and plans adopted by the City Council, and with the purpose statement of the proposed new zone district(s);*
    - The proposed rezone keeps with the Comprehensive Plan City Corridor Placetype by maintaining the MU-R and MU-A along 56<sup>th</sup> and E-470 which will promote regional commercial, retail and service uses. Residential single-family and multi-family uses are permitted as part of the overall mix of uses in the MU-A zoning district. Proposed residential uses in MU-A and R-2 will be located outside of the commercial corridor. The

extension of R-2 to the north is compatible with the existing Active Adult residential south of 52<sup>nd</sup> Ave as well as the single-family residential neighborhoods to the west in Denver. This extension of R-2 is accompanied by a concurrent Comprehensive Plan amendment which extends Emerging Neighborhood Placetype north.

- b. *The applicant has demonstrated that the size, scale, height, density, and multi-modal traffic impacts of the proposed initial zoning or rezoning are compatible with surrounding development or can be made compatible with surrounding development through approval conditions; and*
- The property is currently vacant and the surrounding property has not been developed, therefore, there should be little to no effect on surrounding development.
- c. *The application demonstrates that the change in zoning will not create significant dislocations of tenants or occupants of the property, or that any impacts are outweighed by other public benefits or progress toward other Comprehensive Plan goals that would be achieved by approval of the application.*
- The property in question is currently vacant and no dislocation of tenants or occupants will occur.

We are excited about the opportunity to continue work in this rapidly changing E-470 Corridor. It is our intent to provide the framework to expand upon the successful Green Valley Ranch master-planned community and create long lasting value, which is an important component in implementing the City of Aurora's future for this area.



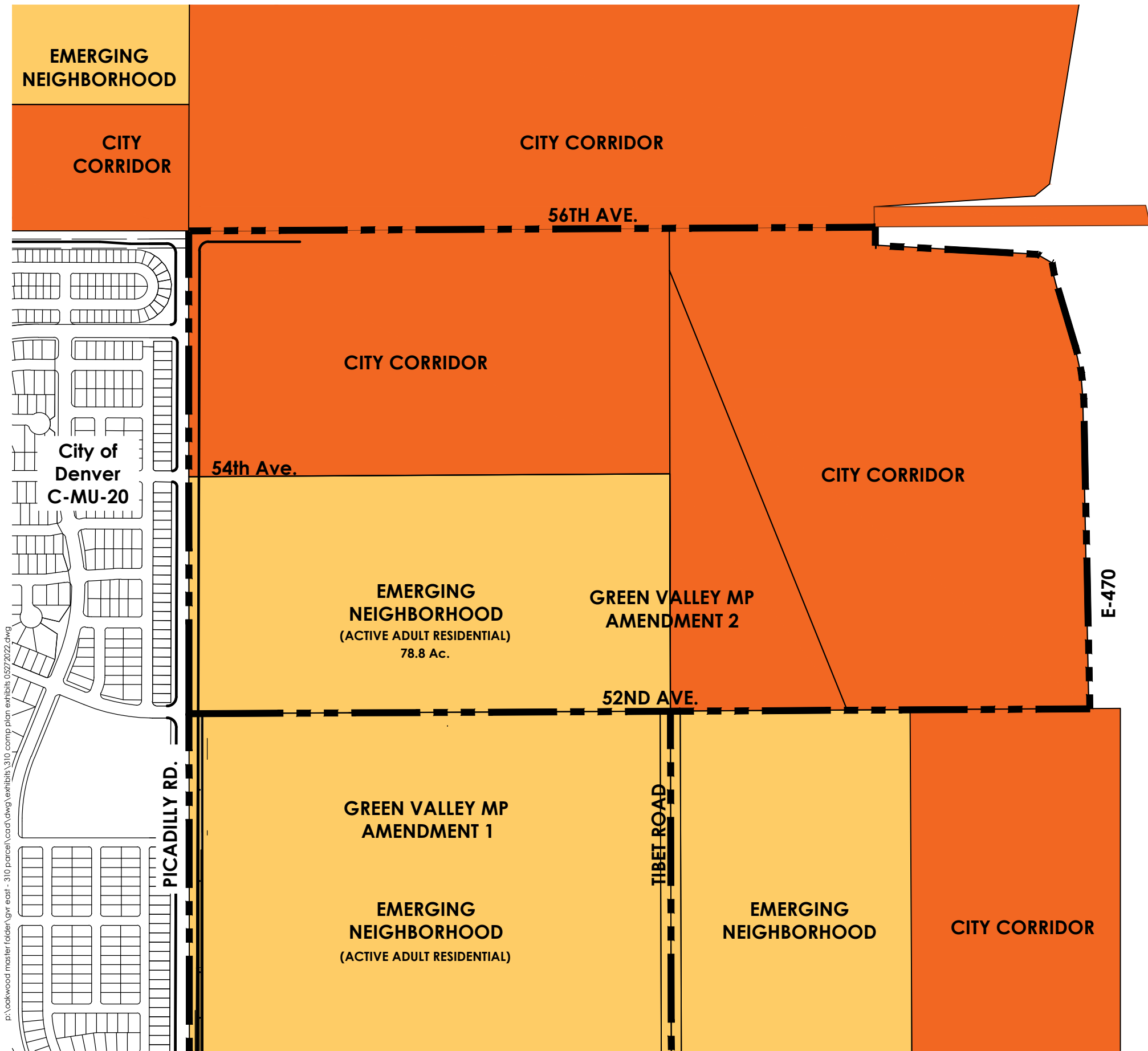
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# Green Valley Master Plan

## EXHIBIT A: EXISTING COMPREHENSIVE PLAN PLACETYPE DESIGNATIONS



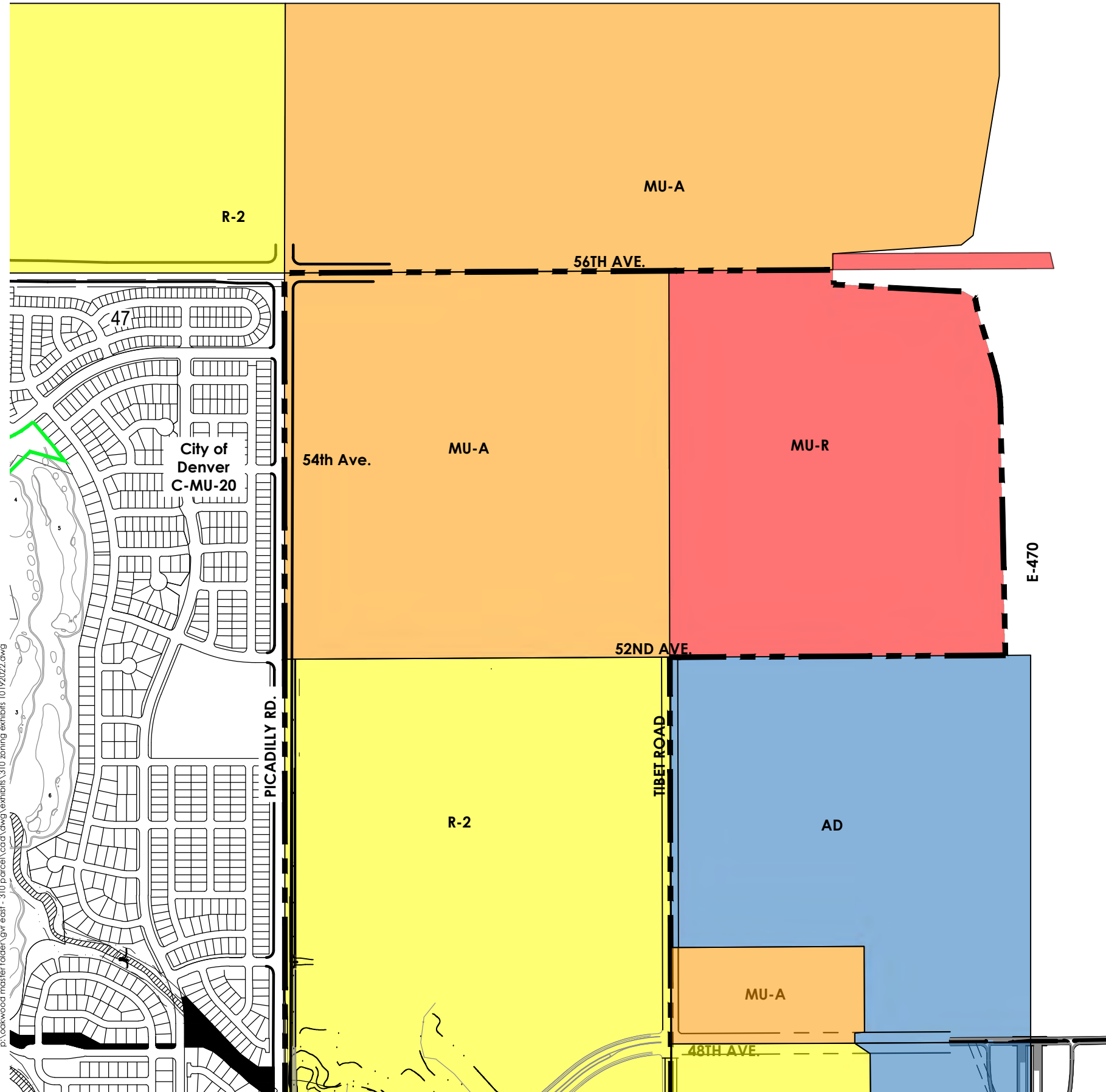




**Green Valley Master Plan**  
**EXHIBIT B: PROPOSED COMPREHENSIVE PLAN PLACETYPE DESIGNATION**

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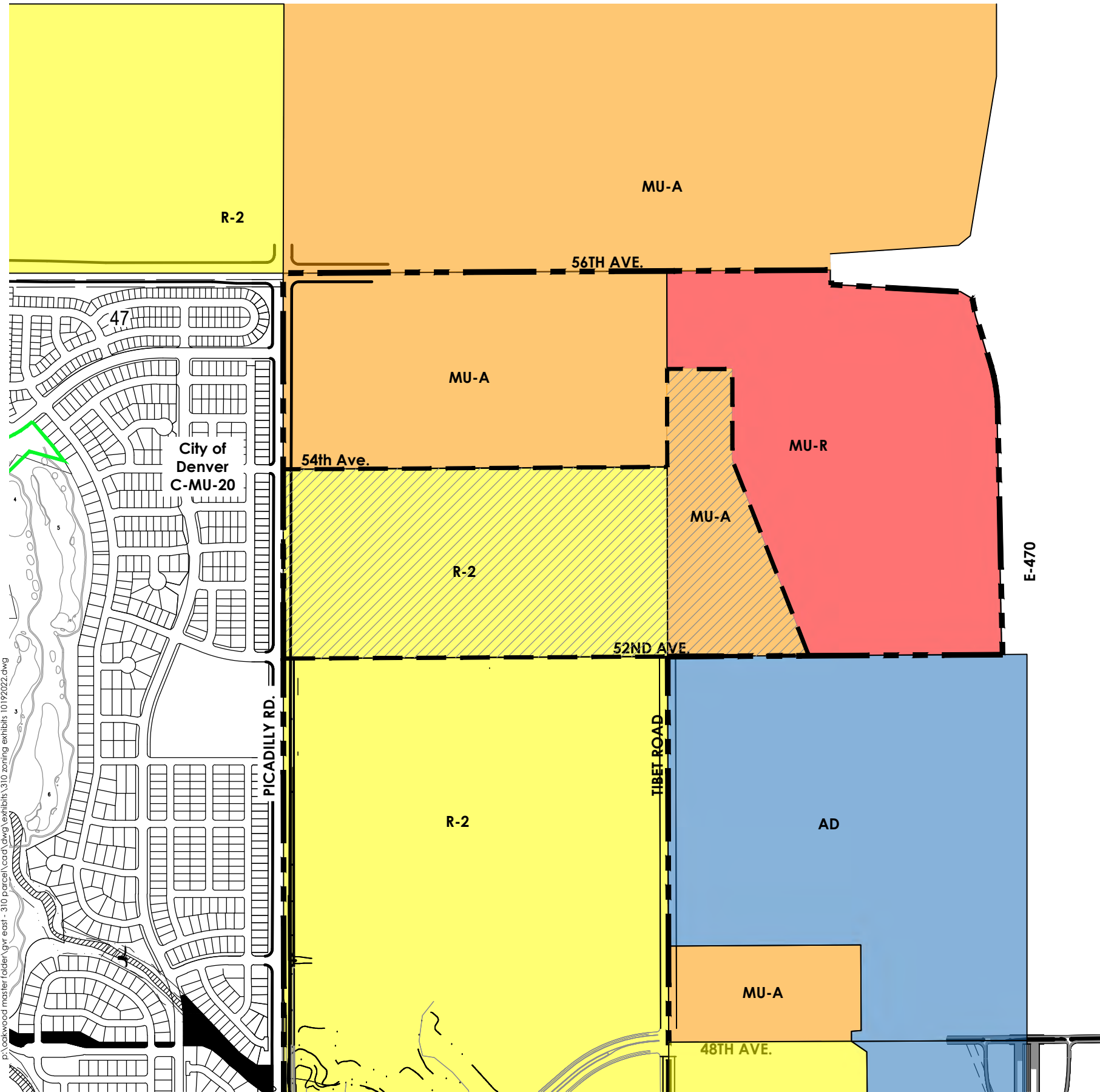
- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS

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# Green Valley Master Plan

## EXHIBIT C: EXISTING ZONING DESIGNATION





- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS

Rezone Parcels	Acres	Zone District(s)
Green Valley Amendment 2 (SE 1/4)	28.3	MU-A
Green Valley Amendment 2 (SW 1/4)	78.8	R-2
<b>Total</b>	<b>107.1</b>	

# Green Valley Master Plan

## EXHIBIT D: PROPOSED ZONING DESIGNATION



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## EXHIBIT A

## ZONING MAP AMENDMENT

A PORTION OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 66 WEST, SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO, **TO BE DESIGNATED AS R-2**, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER, WHENCE THE EAST LINE OF SAID NORTHWEST QUARTER BEARS NORTH 00°07'57" WEST, WITH ALL BEARINGS REFERENCED HEREIN BEING RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, SOUTH 89°40'33" WEST, A DISTANCE OF 2,639.49 FEET TO THE SOUTHWEST CORNER THEREOF;

THENCE DEPARTING SAID SOUTH LINE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, NORTH 00°01'58" WEST, A DISTANCE OF 1,299.62 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89°39'00" EAST, A DISTANCE OF 2,637.23 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER;

THENCE ALONG SAID EAST LINE, SOUTH 00°07'57" EAST, A DISTANCE OF 1,300.81 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 78.751 ACRES, (3,430,398 SQUARE FEET), MORE OR LESS.

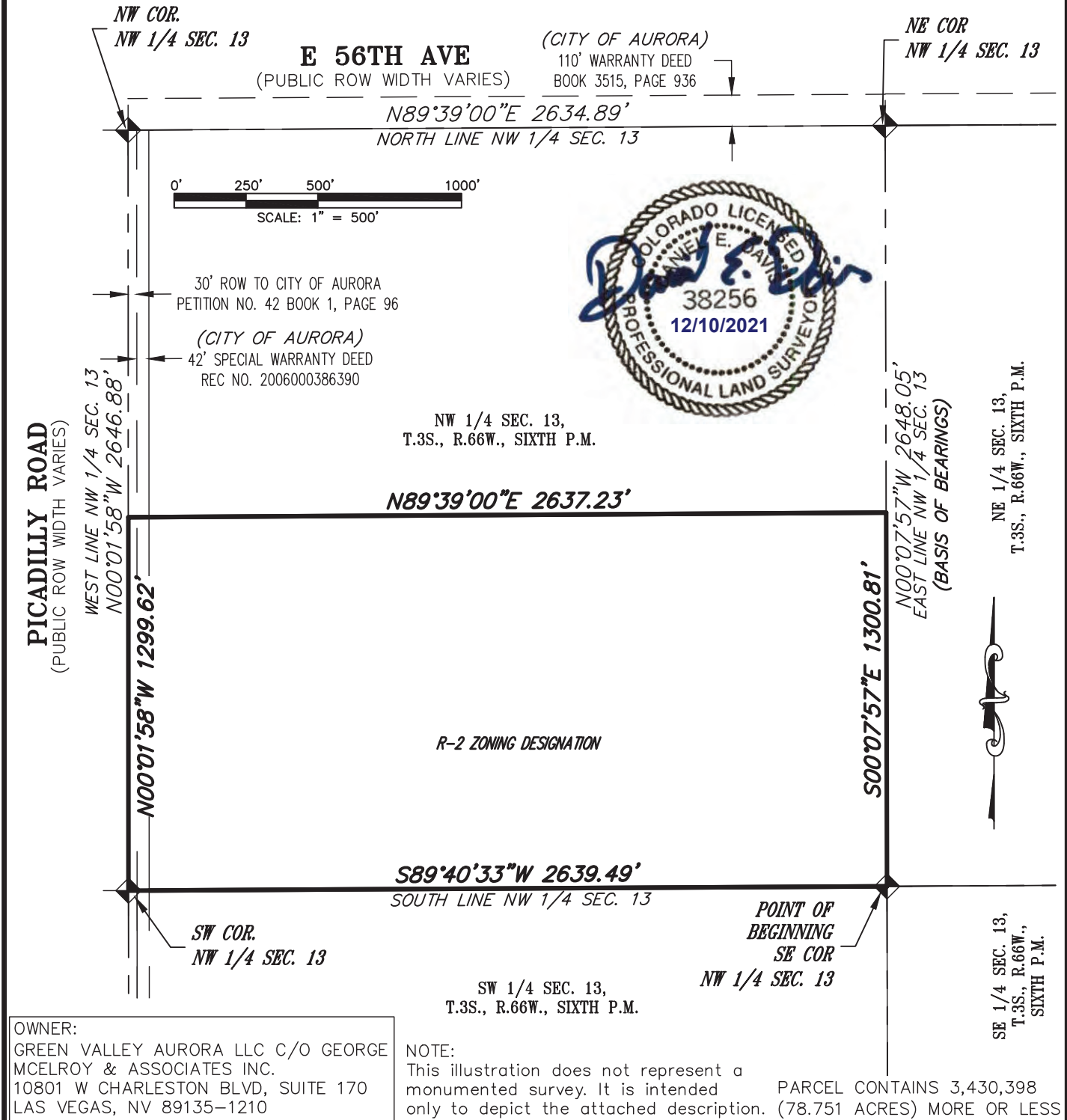
ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

ILLUSTRATION ATTACHED AND MADE A PART HEREOF.



DANIEL E. DAVIS, PLS 38256  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122

ILLUSTRATION FOR EXHIBIT A  
SHEET 2 OF 2



<b>CITY OF AURORA, COLORADO</b>		
DRAWN BY: DED	SCALE: 1"=500'	R-0-W FILE NO.
CHECKED BY: JRW	DATE: 12/3/2021	JOB NO. 19319-28

**A ZONING MAP AMENDMENT**  
BEING A PART OF THE NW 1/4 OF SEC. 13  
T.3S., R.66W., SIXTH P.M.  
CITY OF AURORA, COUNTY OF ADAMS  
STATE OF COLORADO

**EXHIBIT B****ZONING MAP AMENDMENT**

A PORTION OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 66 WEST, SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO, **TO BE DESIGNATED AS MU-(A)**, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER, WHENCE THE WEST LINE OF SAID NORTHEAST QUARTER BEARS NORTH 00°07'57" WEST, WITH ALL BEARINGS REFERENCED HEREIN BEING RELATIVE THERETO;

THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, NORTH 00°07'57" WEST, A DISTANCE OF 1,974.19 FEET;

THENCE DEPARTING SAID WEST LINE, SOUTH 89°54'35" EAST, A DISTANCE OF 448.48 FEET;

THENCE SOUTH 00°00'11" EAST, A DISTANCE OF 624.34 FEET;

THENCE SOUTH 21°19'41" EAST, A DISTANCE OF 626.80 FEET;

THENCE SOUTH 21°20'00" EAST, A DISTANCE OF 815.62 FEET TO THE SOUTH LINE OF SAID NORTHEAST QUARTER;

THENCE ALONG SAID SOUTH LINE, SOUTH 89°40'22" WEST, A DISTANCE OF 968.65 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 28.316 ACRES, (1,233,463 SQUARE FEET), MORE OR LESS.

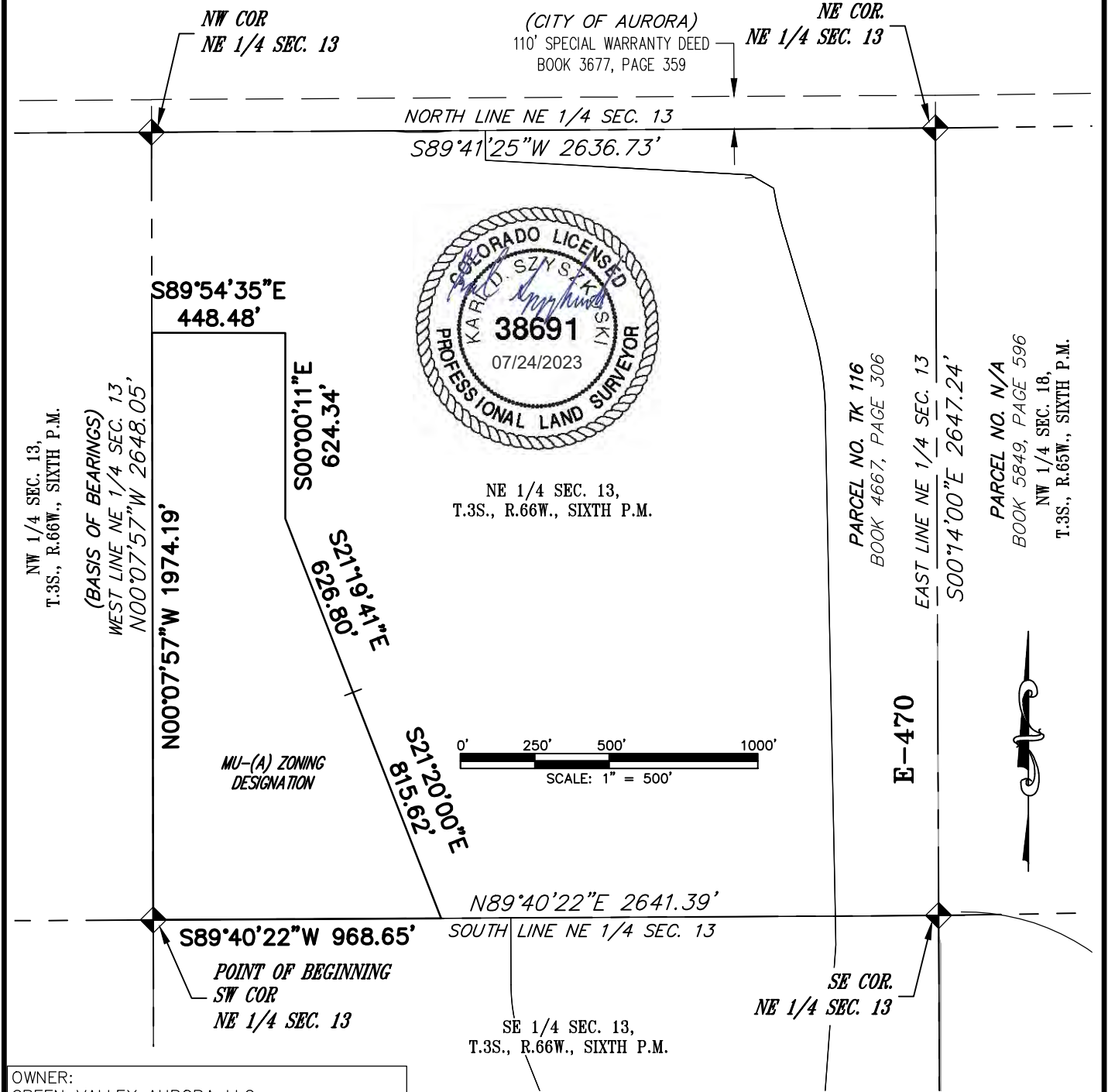
ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

ILLUSTRATION ATTACHED AND MADE A PART HEREOF.

KARL SZYSZKOSKI, PLS 38691  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122



ILLUSTRATION FOR EXHIBIT B  
SHEET 2 OF 2

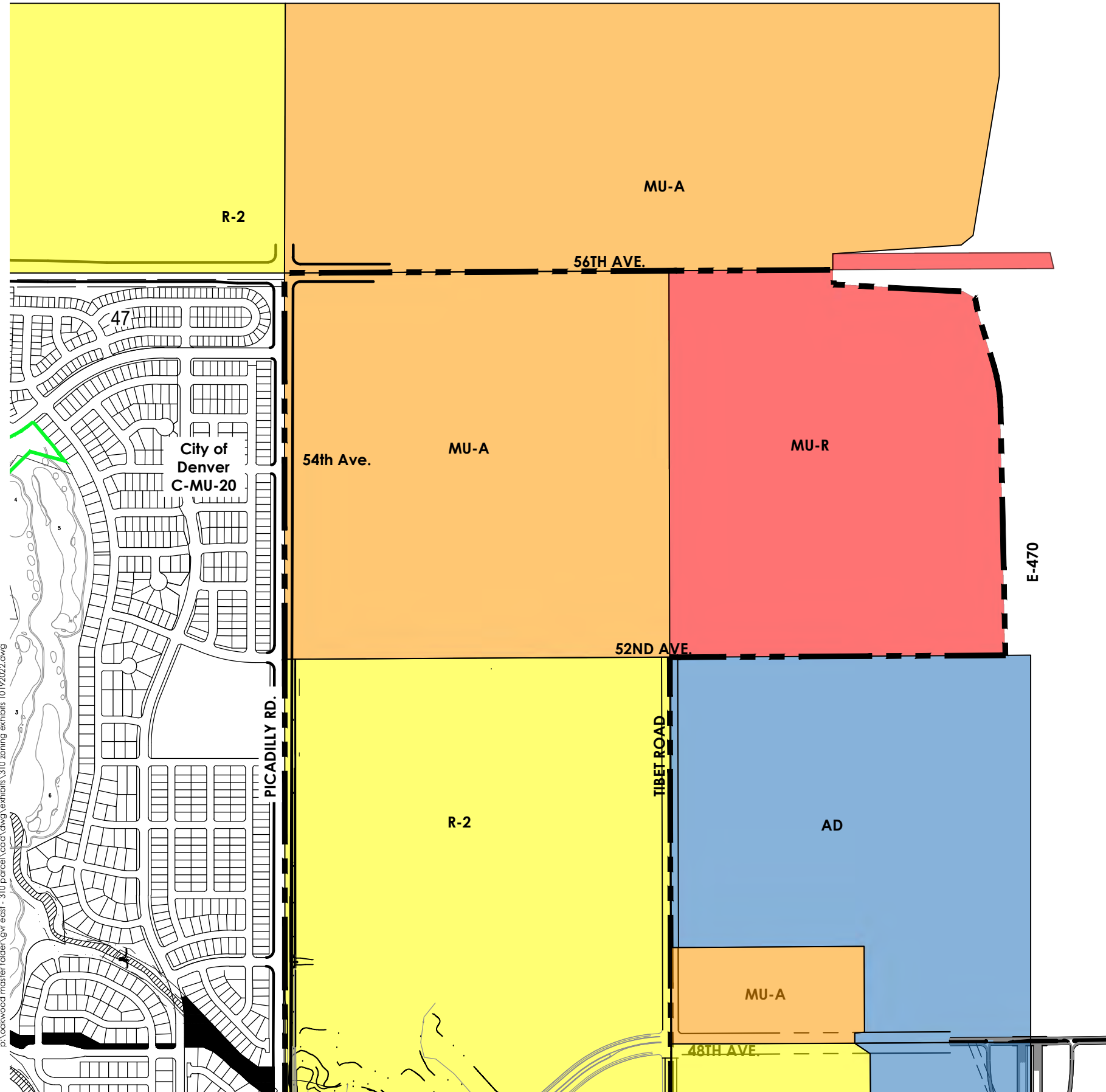







OWNER:  
GREEN VALLEY AURORA LLC  
C/O AWH VENTURES INC  
1700 S PAVILION CENTER DR STE 300  
LAS VEGAS, NV 89135-1862

NOTE:  
This illustration does not represent a  
monumented survey. It is intended  
only to depict the attached description.

PARCEL CONTAINS 1,233,463  
(28.316 ACRES) MORE OR LESS

<b>CITY OF AURORA, COLORADO</b>			<b>A ZONING MAP AMENDMENT</b> BEING A PART OF THE NE 1/4 OF SEC. 13 T.3S., R.66W., SIXTH P.M. CITY OF AURORA, COUNTY OF ADAMS STATE OF COLORADO
DRAWN BY: KDS	SCALE: 1"=500'	R-O-W FILE NO.	
CHECKED BY: DED	DATE: 07/24/2023	JOB NO. 19319-28	



-  R-2 (MEDIUM-DENSITY RESIDENTIAL)
-  MU-A (MIXED-USE AIRPORT)
-  MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
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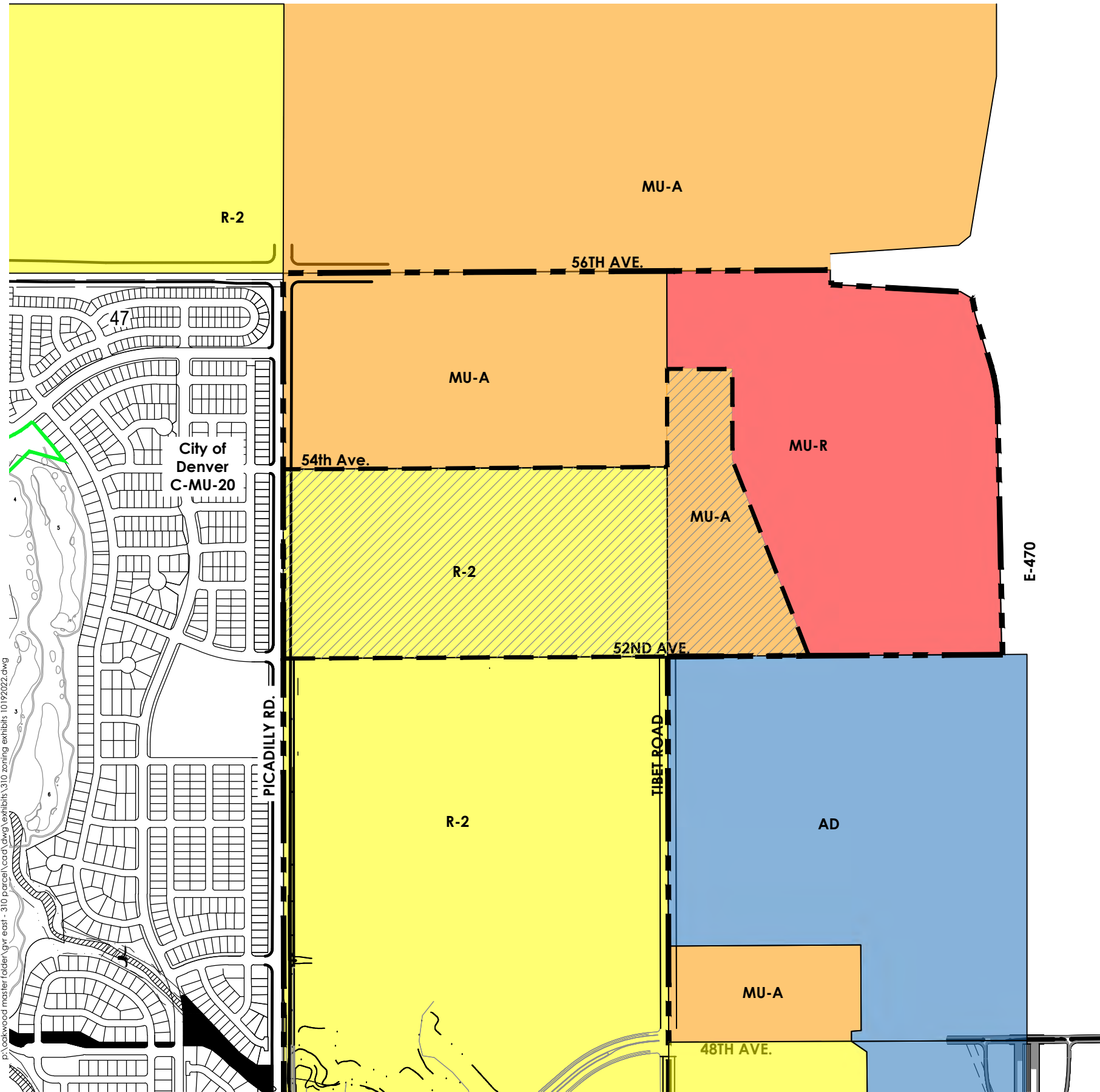
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# Green Valley Master Plan

## EXHIBIT C: EXISTING ZONING DESIGNATION







- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS

Rezone Parcels	Acres	Zone District(s)
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Green Valley Amendment 2 (SW 1/4)	78.8	R-2
<b>Total</b>	<b>107.1</b>	

# Green Valley Master Plan

## EXHIBIT D: PROPOSED ZONING DESIGNATION

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**EXHIBIT A**

**ZONING MAP AMENDMENT**

A PORTION OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 66 WEST, SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO, **TO BE DESIGNATED AS R-2**, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER, WHENCE THE EAST LINE OF SAID NORTHWEST QUARTER BEARS NORTH 00°07'57" WEST, WITH ALL BEARINGS REFERENCED HEREIN BEING RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, SOUTH 89°40'33" WEST, A DISTANCE OF 2,639.49 FEET TO THE SOUTHWEST CORNER THEREOF;

THENCE DEPARTING SAID SOUTH LINE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, NORTH 00°01'58" WEST, A DISTANCE OF 1,299.62 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89°39'00" EAST, A DISTANCE OF 2,637.23 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER;

THENCE ALONG SAID EAST LINE, SOUTH 00°07'57" EAST, A DISTANCE OF 1,300.81 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 78.751 ACRES, (3,430,398 SQUARE FEET), MORE OR LESS.

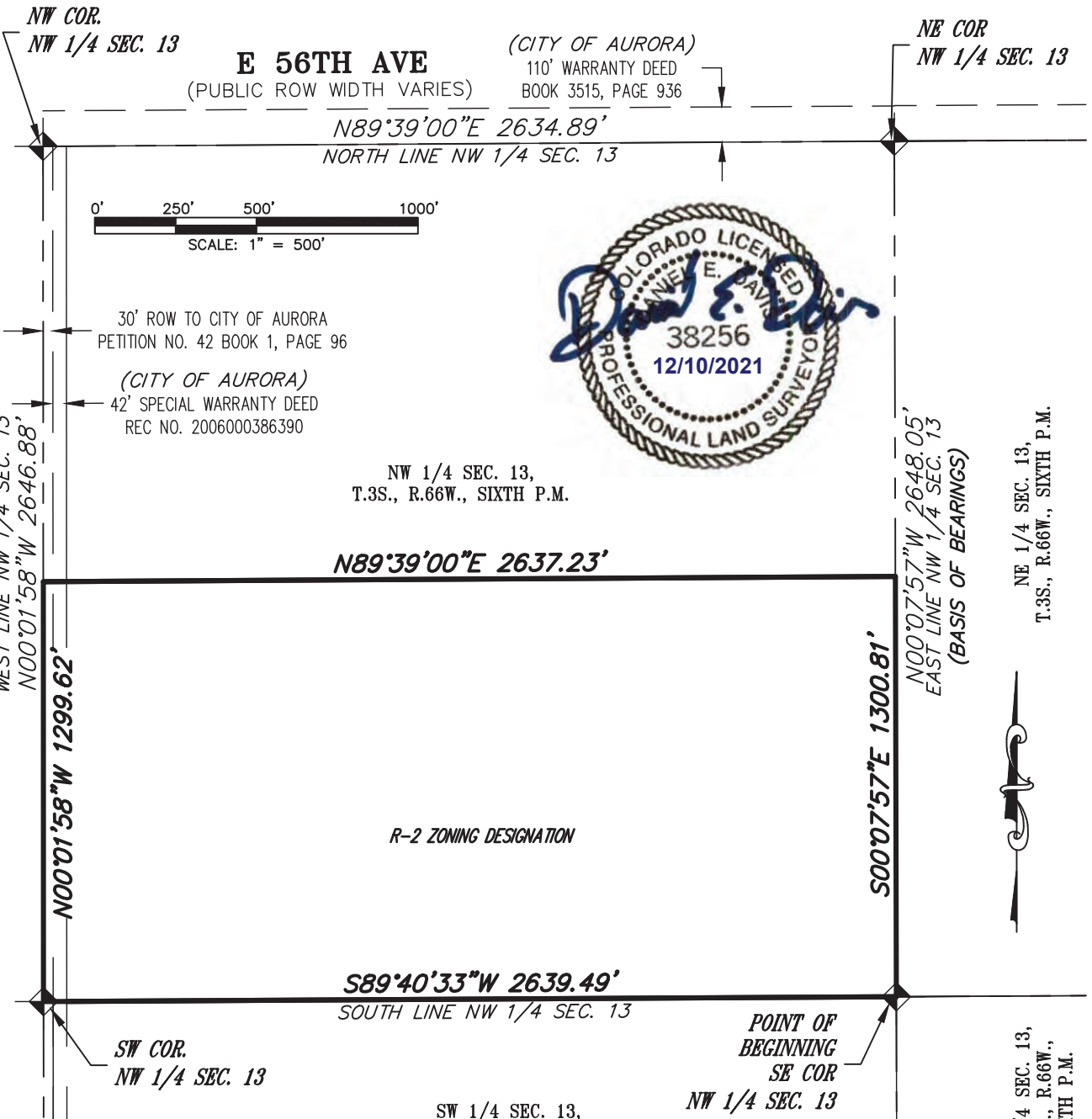
ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

ILLUSTRATION ATTACHED AND MADE A PART HEREOF.



DANIEL E. DAVIS, PLS 38256  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122

**ILLUSTRATION FOR EXHIBIT A**  
SHEET 2 OF 2



OWNER:  
GREEN VALLEY AURORA LLC C/O GEORGE  
MCELROY & ASSOCIATES INC.  
10801 W CHARLESTON BLVD, SUITE 170  
LAS VEGAS, NV 89135-1210

NOTE:  
This illustration does not represent a  
monumented survey. It is intended  
only to depict the attached description. (78.751 ACRES) MORE OR LESS

**CITY OF AURORA, COLORADO**

**A ZONING MAP AMENDMENT**  
BEING A PART OF THE NW 1/4 OF SEC. 13  
T.3S., R.66W., SIXTH P.M.  
CITY OF AURORA, COUNTY OF ADAMS  
STATE OF COLORADO

DRAWN BY: DED	SCALE: 1"=500'	R-0-W FILE NO.
CHECKED BY: JRW	DATE: 12/3/2021	JOB NO. 19319-28

## Form B: MP Narrative

### 1. General Description of the MP

*Briefly describe the general character of your proposed MP. What will be the predominant land uses? What market segment is the proposed development designed to serve?*

In 2008 a 2,500 Ac. Master Plan (MP), formerly Framework Development Plan (FDP), for Green Valley Ranch was approved. This MP included a variety of uses including residential, commercial, mixed use and a variety of parks and open space throughout. The MP was amended for 588 acres west of E-470 known as Amendment 1 and received approval in 2018. Amendment 1 modified planning areas and open space for the 588-acre area, however, there were no other changes made to the MP. The second amendment proposes to modify the 301 acres North and east of 52<sup>nd</sup> Ave. The Master Plan area is also being revised to remove all the area from the original MP approval located east of E-470.

The proposed Green Valley Ranch MP Amendment is to revise the land uses for the 301 acres north and east of 52<sup>nd</sup> Avenue, update land use maps to better align with current site plans, to remove the area east of E-470 from the MP and amend the property boundary due to E-470 purchasing a portion of the property. The proposed amendment also includes the addition of Urban Design and Landscape and Architectural Standards for Commercial/Retail uses.

We are also proposing a rezone with this Green Valley Ranch MP amendment for parcels located north of 52<sup>nd</sup> Avenue between Picadilly Road to the CIG Gas Easement east of Tibet Road. The site is bordered by MU-A (Mixed Use-Airport) to the north, R-2 (Medium Density Residential) to the south, MU-R (Mixed Use-Regional) to the east (of E-470). The Active Adult neighborhood located between 48<sup>th</sup> Ave and 52<sup>nd</sup> Ave between Picadilly Road and E Tibet Road will be expanded to the north. This community is focused on the 55+ age group, while residential uses south of 48<sup>th</sup> Ave are focused on all age groups. Adjacent to 56<sup>th</sup> Avenue and East of Picadilly Road the land uses will be commercial/retail uses to serve this community and other surrounding communities near E-470.

### 2. Defining Character of the MP

*Describe how your proposed MP will create a unique community with a definable character and special "sense of place". What facilities, amenities and special design features will set it apart in the marketplace from similar developments in your*

*area?*

Green Valley Ranch MP will be a unified community following the “Colorado” theme. This theme reflects the beauty of the Colorado foothills landscape and will have a more rustic character. Predominant architectural styles will include Classic, Contemporary, Homestead, and Victorian with materials complementing the surrounding area.

The architecture is not defined by neighborhood, but rather by a mix of product types. The residential areas throughout the development consist of a variety of housing types: single-family detached homes, motorcourts with single-family detached, front loaded single-family attached duplex homes, and may include Single-Family Attached and multifamily homes within the mixed-use planning areas. These varying styles create diverse neighborhoods in both style and affordability. The primary landscape theme consists of large sweeping native areas that use landforms and native plantings indicative of the Colorado foothills. Large planting beds located along streets and trails will be made up of masses of grasses, shrubs, and trees to provide both seasonal interest and views into and out of the site. Landforms will be accentuated with the use of berming and rock outcroppings to create spaces for both wildlife and residents to enjoy.

The commercial planning areas will include a variety of land uses, including office, institutional and retail. A component of the commercial development is a Main Street per the Mixed-Use Regional District (MU-R) Aurora standards. These main street standards are further described in Tab 10. Due to close proximity to E470 and the interchange at 56<sup>th</sup>, the commercial center is positioned to attract a variety of commercial uses which may include large scale retail, office or warehouse retail. Commercial uses may include retail shops, restaurants, pedestrian spaces, and outdoor plazas. The vision for Main Street will be to create a high-quality public space for the Green Valley Ranch community. The commercial planning areas and Main Street will reflect the community ‘Colorado’ theme through architecture, signage, urban spaces, and site furnishings.

### **3. Zoning Conformance**

*Does the MP accurately reflect adopted zone district boundaries?*

The Green Valley Ranch MP Amendment area is located within R-2, MU-A and MU-R zone districts. R-2 is located from 54<sup>th</sup> avenue to the north, 38<sup>th</sup> avenue to the south, and from Picadilly Road to the west to E470 to the east. The Mixed Use Airport (MU-A) and Mixed Use Regional District(MU-R) is

located from the 54<sup>th</sup> avenue to the south to 56<sup>th</sup> avenue to the north, and from Picadilly Road to the west to E-470 to the east. A Zone Map Amendment is concurrently being proposed with this MP Amendment to rezone 78.8 Acres of MU-A north of 52<sup>nd</sup> Ave to R-2 zone designation in order to extend the active adult community. We're also proposing to rezone 28.3 Acres of the current MU-R east of Tibet Road to MU-A. Refer to the Rezone exhibits that are provided as part of that submittal.

#### 4. Potential Regulatory Conflicts

*Are there any existing or potential conflicts between MP design ordinance requirements and the terms of any existing annexation agreements or agreements with other jurisdictions or interest groups? If so what are they and how you propose to resolve them?*

The Original Annexation Agreements include the following park and school dedication requirements:

Public Land Dedication - 6% of the area zoned for residential uses to be used for open space, and 2% of the area zoned for non-residential uses to be used for municipal purposes including fire facilities. School site dedications- up to 4% of the area zoned for residential uses. The following dedications were provided in Amendment 1:

##### Public Facilities

2% of non-residential acreage (149.7 x 2% = 3.0 Ac)

- Land dedicated to city for future fire station along 48<sup>th</sup> Ave.

##### Schools

###### P-8 School:

614 Elementary School Students (.0175 acres/child) = 10.75 ac

289 Middle School Students (.025 acres/child) = 7.23 ac

Subtotal: 17.98 ac

- Amendment 1 included an 18.0 Ac school site
- Additional School dedication requirements will be met for all residential uses once future site plans exceed the original dedications.

###### High School:

361 High School Students (.032 acres/child) = 11.565 ac

Total Acres Required = 29.55 ac

Open Space:

6% of residential acreage (564 Ac x 6% = 34 Ac)

Green Valley Ranch Master Plan:

Neighborhood Park: (3 AC. Per 1000 Residents)

Required: 31.2 acres

Provided: 31.2 acres

Community Park: (1.1 AC. Per 1000 Residents)

Required: 10.5 acres

Provided: 6.6 acre cash-in-lieu payment made as part of amendment 1.

Remaining payment to be made by first residential plat of either PA45-48.

Open Space: (7.8 AC. Per 1000 Residents)

Required: 81.0 acres

Provided: 82.7 acres

## 5. Adjustments

*Does your current design require any ordinance waivers in order to be approved? If so, list each proposed waiver, and answer the following questions for each:*

- *What are the specific site-related characteristics of your site that have led to the waiver request? (Do not include self-imposed hardships or constraints as a justification. Financial constraints may be considered, but only as they relate to unusual site conditions. Do not simply respond that meeting all development standards would be too costly.)*
- *What design alternatives have you considered to avoid the waiver? Why weren't these alternatives chosen?*
- *What measures have been taken to reduce the severity or extent of the proposed waiver?*
- *What compensating increases in design standards have you proposed to mitigate the waiver's impact?*

There are no adjustments being requested in the MP.

## 6. Required City Facilities

*What additional city facilities or services will the City of Aurora have to provide in order for your MP to be implemented? What police, fire, and recreation facilities are required and where are they located (inside or*

*outside your MP boundary.) To what extent will your development plan help to fund or construct these facilities?*

- As part of this Master Plan, the developer will be responsible for the construction of and/or funding of the roads and services prior to dedication to the City of Aurora. The City of Aurora will provide sewer and water services, police, fire, and library services. The City will also provide maintenance for public parks and public streets following dedication to the City. See Public Improvements Phasing Plan, Form J and the Development Agreement.
- A summary of the proposed water and sewer service strategy is contained in Form A. For additional detail, please refer to the Master Utility Plan and the Development Agreement.
- Picadilly Road, 56<sup>th</sup> Avenue and 48<sup>th</sup> Avenue are planned as six-lane Principal Arterials. 38<sup>th</sup> Avenue is planned as a four-lane Minor Arterial. 52<sup>nd</sup> Avenue, Tibet Road from 38<sup>th</sup> Ave to 48<sup>th</sup> Ave, and 38<sup>th</sup> Avenue are planned as three-lane collectors. 42<sup>nd</sup> Avenue is planned as a two-lane collector. Tibet Road from 48<sup>th</sup> Ave to 56<sup>th</sup> Ave is planned as a four-lane Minor Arterial. The arterials will require improvements based on City standards with development phasing. See Public Improvements Phasing Plan and the Development Agreement.

## 7. Vehicular Circulation

*Do your proposed arterial and collector roadways align with the arterials and collectors of adjacent properties? Do your roadway cross-sections match adjacent cross-sections? If not, explain why.*

- West of Picadilly, all roadways are within the City and County of Denver. The east half of Picadilly road and all roads to the east are within Aurora. Principal and Minor Arterials align to connect with the arterials to the north, south, east, and west. To the east, 48<sup>th</sup> Ave is aligned to connect with 48<sup>th</sup> Ave. in the approved Windler MP. Collectors in Aurora are spaced at half-mile intervals, but to the west in Denver, collectors are not spaced at the same interval. Due to the differences, the road alignments have been aligned to match existing roads within Denver.

See Street Cross Sections on Tab 10.14-10.15.

## 8. Pedestrian Circulation



*Do off-street trails on your site connect with those on adjacent properties?  
Do your cross sections match adjacent cross sections? If not, explain why.*

- Off-street trails within Green Valley Ranch MP are aligned to connect with trails to the west in Green Valley Ranch Denver, including the one along the First Creek Drainage and along Tributary T near 48<sup>th</sup> Avenue. A community trail from the PA-16 open space will cross 52<sup>nd</sup> Ave via a grade separated crossing and extend north into PA-62 and the proposed active adult community. This will link the parks and amenities being provided to this community.
- Trail sections in Green Valley Ranch MP will be constructed to the City of Aurora standards and shall be constructed of concrete in the more urban areas of the community, and in the more natural areas, other materials, such as decomposed granite, may be proposed at the time of Site Plan review. Trails along drainage channels will be constructed according to maintenance road / trail standards of the Urban Drainage and Flood Control District and the P&OSD standards and will be a minimum of 10 feet wide. These trails shall both act as pedestrian trails and maintenance trails. Regional trails outside of the drainage ways will be ten (10) feet wide and community trails shall have a minimum width of eight (8) feet. Refer to the Open Space Plan for regional and community trail locations. Six (6) foot wide minimum neighborhood trails will also be incorporated into the trail network. These trail locations will be determined at Site Plan.
- The proposed Main Street in the commercial area will have a strong pedestrian connection across Tibet Road into the active adult community.

## **9. Protection of Natural Features, Resources and Sensitive Areas.**

*Describe how the development will be designed to protect, use or enhance natural resources and features. In particular, describe how the design of the development will respond to:*

- *Water features, such as floodplains, streams, and arroyos.*
  - Open space is planned along the drainage corridors. This open space becomes part of the open space/trail network that crosses the site linking neighborhoods to parks, a school, and activity centers.

- *Adjacent parks and public open space*
  - There are four (4) neighborhood parks within close proximity to the Open Space Corridor. This corridor begins south off-site from 38<sup>th</sup> Avenue and E-470 extending diagonally, towards 48<sup>th</sup> Avenue and Picadilly Road, within Green Valley Ranch. Two other neighborhood parks are along open space corridors in the active adult community and connect up to this main Tributary T open space.
  
- *Historic or archeological sites*
  - A review of the records of The Colorado Historical Society Office of Archaeology and Historic Preservation "Inventory of Cultural Resources" identified a number of items inventoried on the site, but none were found have significant historic or archaeological value.
  - The majority of these sites occur within the site's drainage areas, which will be enhanced as open space/trail corridors.
  
- *Significant views of the Front Range and views from public parks and I-70 and E- 470 and other collector and arterial streets*
  - Views from public parks and other collector streets west will be protected at strategic points within the development. The use of topography and vegetation will frame scenic vistas.
  
- *Riparian wildlife habitat*
  - There are no true riparian zones along the drainage. There is no flowing water or springs along the drainage, and no channels have developed.
  - Tributary T just east of Picadilly Road in Section 24 has one old mature cottonwood along the drainage corridors. This is also not a true riparian zone since there is no flowing water except after a storm, and there is no definite channel. The understory is an overgrazed pasture with no brushes or willow.
  
- *The approximate topographic form of major ridgelines and swales*
  - There are no major ridgelines or swales. The drainages will be enhanced as a part of the planned community's open space/trail network.
  
- *Natural or geologic hazard areas, including unstable slopes and expansive soils*

- No geologic hazard areas or expansive soils have been identified on the site.
- *Other natural features such as bluffs, ridges, steep slopes, stands of mature trees, rock outcroppings, or wetlands.*
  - Slopes over 6% are primarily found in the drainage areas that will be preserved/ enhanced as open space. There are no bluffs, ridges, or rock outcroppings. There are a few mature trees in and around the drainage areas that will be preserved to the extent possible within the open space areas.

## 10. Neighborhood Concept

*Briefly describe the location of your individual neighborhoods. How have you defined the boundaries for each neighborhood? How are the architectural styles and other design features distributed among the neighborhoods? Are there any styles or other design standards that are restricted to specific areas?*

The Green Valley Ranch Master Plan will be unified community. The architecture is defined by a mix of product types, which vary by location and quantity throughout the entire development which is split into Active Adult north of 48<sup>th</sup> Ave and a more Traditional neighborhood south of 48<sup>th</sup> Ave. When mixed together, these varying types create diverse neighborhoods in both style and affordability.

## 11. Black Forest Ordinance

*Is the Black Forest Ordinance applicable to your site? If so where do the impacted areas show on your exhibits, and how will the requirements of the ordinance be carried out?*

- The Green Valley Ranch site is outside of the Black Forest Ordinance jurisdictional area.

## 12. Steep Slope Standards

*Does your development plan include building on areas with an existing slope of 6% or greater? If so, what standards and design strategies have you adopted to deal with drainage and aesthetic issues? Have you reviewed and considered our recommended steep slope design guidelines? If not, why?*

- Slopes over 6% are primarily located in the drainage areas that are enhanced as open space.

### 13. Consultations with Outside Jurisdictions and Agencies

*Have you consulted with representatives of your local school district, the Colorado Division of Wildlife, the Colorado Department of Public Health and Environment, or other applicable local, state or federal agencies? If so, list the dates, contact person, and results of your discussions. Include any letters you've received from these agencies as an appendix to your application.*

- A number of meetings have been held between representatives of the applicant and the Aurora Public Schools to reach agreement on servicing the Green Valley Ranch Master Plan.

**TAB 8.3**

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
1. Floodway Channel	PA-28	CHANNEL	3.4				Storm flow conveyance. Not Credited towards public land dedication requirement.
	PA-29	CHANNEL	2.0				Storm flow conveyance. Not Credited towards public land dedication requirement.
	PA-30	CHANNEL	2.3				Storm flow conveyance. Not Credited towards public land dedication requirement.
Subtotal			7.7				
2. Required Land Dedication Areas for Park, Schools, & Fire Stations	PA-10	CLUBHOUSE	3.5				Amenity Area and Pool
	PA-11	CLUBHOUSE	1.8				Amenity Area and Pool
	PA-12	SCHOOL-P-8	18.0				Public School P-8
	PA-13	NEIGHBORHOOD PARK	6.2	3.0 ACRES PER 1,000 RESIDENTS			6.2 AC net Credited toward neighborhood park requirement.
	PA-14	NEIGHBORHOOD PARK	5.7	3.0 ACRES PER 1,000 RESIDENTS			5.7 AC net Credited toward neighborhood park requirement.
	PA-15	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-16	OS-D	18.1	7.8 ACRES PER 1,000 RESIDENTS			18.1 AC net Credited toward open space requirement.
	PA-17	OS-D(Corridor)	2.8	7.8 ACRES PER 1,000 RESIDENTS			2.8 AC net Credited toward open space requirement.
	PA-18	OS-D(Corridor)	1.7	7.8 ACRES PER 1,000 RESIDENTS			1.7 AC net Credited toward open space requirement.
	PA-19	OS-D (Corridor)	3.8	7.8 ACRES PER 1,000 RESIDENTS			3.8 AC net Credited toward open space requirement.
	PA-20	OS-D(Corridor)	10.6	7.8 ACRES PER 1,000 RESIDENTS			10.6 AC net Credited toward open space requirement.
	PA-21	OS-D(Corridor)	1.6	7.8 ACRES PER 1,000 RESIDENTS			1.6 AC net Credited toward open space requirement.
	PA-22	OS-D(Corridor)	3.9	7.8 ACRES PER 1,000 RESIDENTS			3.9 AC net Credited toward open space requirement.
	PA-23	OS-D(Corridor)	9.8	7.8 ACRES PER 1,000 RESIDENTS			9.8 AC net Credited toward open space requirement.
	PA-24	OS-D(Corridor)	6.5	7.8 ACRES PER 1,000 RESIDENTS			6.5 AC net Credited toward open space requirement.
	PA-25	DETENTION	5.4				0 AC net Credited toward open space requirement.
	PA-26	DETENTION	6.8				0 AC net Credited toward open space requirement.
	PA-27	DETENTION	2.1				0 AC net Credited toward open space requirement.
	PA-31	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-32	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.

Sheet Title:

**LAND USE MATRIX**

Land Use Map, Matrix and Standard Notes  
Master Plan

Project Title:

**Green Valley Ranch Master Plan Amendment 2**  
Aurora, Colorado

**GREEN VALLEY RANCH**

TAB 8.3

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
2. Required Land Dedication Areas for Park, Schools, & Fire Stations	PA-33	OS-D	0.8	7.8 ACRES PER 1,000 RESIDENTS			0.8 AC net Credited toward open space requirement.
	PA-34	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-35	OS-D	0.4	7.8 ACRES PER 1,000 RESIDENTS			0.4 AC net Credited toward open space requirement.
	PA-36	OS-D	1.1	7.8 ACRES PER 1,000 RESIDENTS			1.1 AC net Credited toward open space requirement.
	PA-37	OS-D	1.0	7.8 ACRES PER 1,000 RESIDENTS			1.0 AC net Credited toward open space requirement.
	PA-38	OS-POCKET PARK	0.9	7.8 ACRES PER 1,000 RESIDENTS			0.9 AC net Credited toward open space requirement.
	PA-39	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-40	OS-POCKET PARK	2.0	7.8 ACRES PER 1,000 RESIDENTS			2.0 AC net Credited toward open space requirement.
	PA-41	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-42	EASEMENT (UTILITY)	0.5				0 AC net Credited toward open space requirement.
	PA-43	EASEMENT (UTILITY)	0.5				0 AC net Credited toward open space requirement.
	PA-44	EASEMENT (MULTI-USE)	1.7				0 AC net Credited toward open space requirement.
	PA-56	OS- POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-57	OS- POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-58	OS-D(Corridor)	1.7	7.8 ACRES PER 1,000 RESIDENTS			1.7 AC net Credited toward open space requirement.
	PA-59	OS-D(Corridor)	1.2	7.8 ACRES PER 1,000 RESIDENTS			1.2 AC net Credited toward neighborhood park requirement.
	PA-60	NEIGHBORHOOD PARK	5.0	7.8 ACRES PER 1,000 RESIDENTS			5.0 AC net Credited toward open space requirement.
	PA-61	OS-D(Corridor)	11.8	7.8 ACRES PER 1,000 RESIDENTS			11.8 AC net Credited toward open space requirement.
	PA-62	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-63	NEIGHBORHOOD PARK	5.3	3.0 ACRES PER 1,000 RESIDENTS			5.3 AC net Credited toward neighborhood park requirement.
PA-64	EASEMENT (MULTI-USE)	6.1				0 AC net Credited toward open space requirement.	
Subtotal			160.2				

Sheet Title:

**LAND USE MATRIX**

Land Use Map, Matrix and Standard Notes  
Master Plan

Project Title:

**Green Valley Ranch Master Plan Amendment 2**  
Aurora, Colorado

**GREEN VALLEY RANCH**

TAB 8.3

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
3a. Development Areas Subzone: R-2 Subarea-C	PA-1	AA, SFD STAND, SFD SMALL	30.2	5.2 DU/AC	241	157	Max. Potential Density is 8 DU/AC
	PA-2	AA, SFD STAND, SFD SMALL, SFA DUPLEX	42.2	5.6 DU/AC	338	236	Max. Potential Density is 8 DU/AC
	PA-3	AA, SFD STAND, SFD SMALL	30.0	5.0 DU/AC	240	150	Max. Potential Density is 8 DU/AC
	PA-4	AA, SFD STAND, SFD SMALL	26.3	4.0 DU/AC	210	105	Max. Potential Density is 8 DU/AC
	PA-5	SFD STAND, SFD SMALL	26.4	4.1 DU/AC	211	108	Max. Potential Density is 8 DU/AC
	PA-6	SFD STAND, SFD SMALL	78.9	5.3 DU/AC	631	418	Max. Potential Density is 8 DU/AC
	PA-7	SFD STAND, SFD SMALL	91.9	5.9 DU/AC	735	542	Max. Potential Density is 8 DU/AC
	PA-8	SFD STAND, SFD SMALL	30.1	6.2 DU/AC	241	186	Max. Potential Density is 8 DU/AC
	PA-9	SFD STAND, SFD SMALL	62.9	6.5 DU/AC	503	408	Max. Potential Density is 8 DU/AC
	PA-45	AA, SFD STAND, SFD SMALL, SFA DUPLEX	26.3	5.0 DU/AC	210	131	Max. Potential Density by code is 5 DU/AC
	PA-46	AA, SFD STAND, SFD SMALL, SFA DUPLEX	39.0	5.0 DU/AC	312	195	Max. Potential Density by code is 5 DU/AC
		RIGHT-OF-WAY	41.8				
Subtotal			526.0				
3b. Development Areas Subzone: MU-A & MU-R	PA-47	AA, SFA, SFD SMALL, SFD STAND, MULTI-FAMILY	15.6	7.0 DU/AC	125	109	Max. Potential Density by Code is 40 DU/AC
	PA-48		22.5	7.0 DU/AC	180	157	Max. Potential Density by Code is 40 DU/AC
	PA-49		19.7	10.0 DU/AC	394	197	Max. Potential Density by Code is 40 DU/AC
	PA-50	SFA, MULTI-FAMILY	57.0	10.0 DU/AC	1026	570	Max. Potential Density by Code is 40 DU/AC
	PA-51		15.3	10.0 DU/AC	275	153	Max. Potential Density by Code is 40 DU/AC
	PA-52		9.6	10.0 DU/AC	173	96	Max. Potential Density by Code is 40 DU/AC
	PA-53	SFA, SFD SMALL, SFD STAND, MULTI-FAMILY	19.6	10.0 DU/AC	353	196	Max. Potential Density by Code is 40 DU/AC
	PA-54		13.7	10.0 DU/AC	247	137	Max. Potential Density by Code is 40 DU/AC
	PA-55		17.2	15.0 DU/AC	310	258	Max. Potential Density by Code is 40 DU/AC
Subtotal			190.2				
<b>SUB AREA TOTAL</b>			<b>884.1</b>		<b>6955</b>	<b>4509</b>	

Sheet Title:

## LAND USE MATRIX

Land Use Map, Matrix and Standard Notes  
Master Plan

---

Project Title:

### Green Valley Ranch Master Plan Amendment 2

Aurora, Colorado

---

**GREEN VALLEY RANCH**

**TAB 8.3**

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
4. Total Map Acreage (Sub-Area Total Above)			884.1				
5. Less 1/2 of Perimeter Streets Not Owned by Applicant			16.3				
6. Applicant's Acreage Listed in Application (Line 4 minus Line 5)			867.8				
7. Total Floodplain Acreage			7.7				
8. Total Adjusted Gross MP Acreage (Line 4 minus Line 7)			876.4				
9. Total Active Adult Planning Areas			232.1	1.58 PERSONS PER UNIT	1856	1240	1960 Estimated Residents
10. Total Single Family Planning Areas			290.2	2.65 PERSONS PER UNIT	2322	1662	4405 Estimated Residents
12. Total Mixed Use Planning Areas			152.1	2.5 PERSONS PER UNIT	2777	1607	4018 Estimated Residents
<b>12. Total Residential</b>			<b>674.4</b>		<b>6955</b>	<b>4509</b>	<b>10383 Estimated Residents</b>
13. Check for avg. residential density in subzone				5 DU's/AC TIMES LINE 8	4382	4509	
14. Small Lot Total				50% of TOTAL UNITS	3478	2255	
15. Check for maximum allowable number of multi-family units							
16. Total Retail Planning Areas			0.0				
17. Total Office Planning Areas			0.0				
18. Total Industrial Planning Areas			0.0				
19. Total Mixed Commercial Planning Areas			190.2				
<b>20. Total Commercial</b>			<b>190.2</b>				
21. Total Neighborhood Parks			31.2	3.0 AC / 1000 RESIDENTS			Required Land Dedication = 31.2 AC. Provided Land Dedication = 31.2 AC.
22. Total Community Parks			0.0	1.1 AC / 1000 RESIDENTS			Requirement of 11.4 AC will be met by applicant cash-in-lieu payment (6.6 AC. Cash-in-lieu payment made as part of Amendment 1) Remaining payment to be made by first residential plat of either PA45-54
23. Total other Credited Open Space including trail corridors, greenbelts, and special rec. sites			82.7	7.8 AC / 1000 RESIDENTS			Required Land Dedication = 81.0 AC. Provided Land Dedication = 82.7 AC.
<b>24. Total Open Space</b>			<b>113.9</b>				<b>Required Land Dedication = 123.6 AC. Provided Land Dedication = 113.9 AC. Provided Cash-In-Lieu Payment = 11.4 AC.</b>

Sheet Title:

**LAND USE MATRIX**

**Land Use Map, Matrix and Standard Notes**

Master Plan

Project Title:

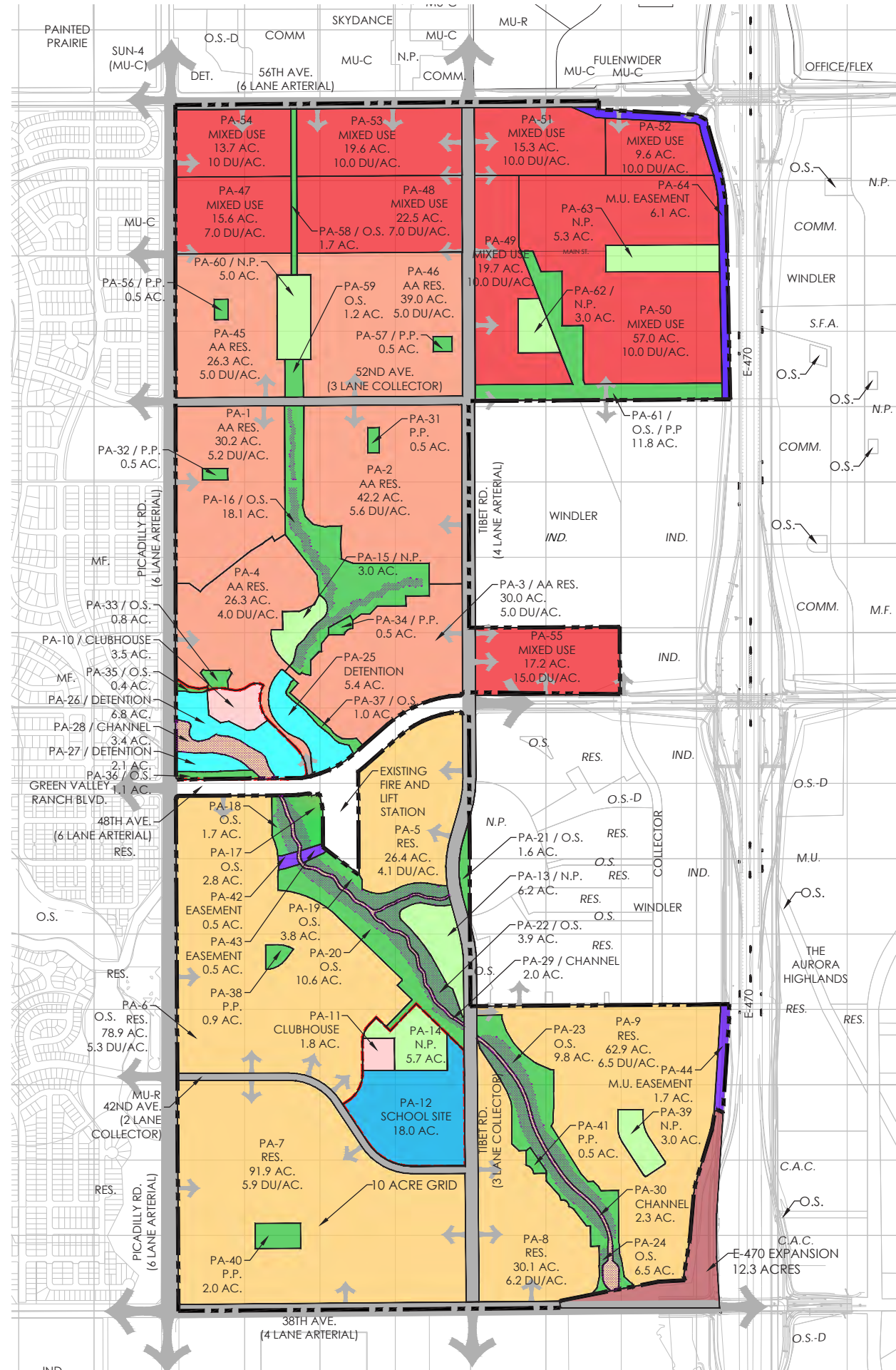
**Green Valley Ranch Master Plan Amendment 2**

Aurora, Colorado

**GREEN VALLEY RANCH**



TAB 8.4



LEGEND

- SINGLE FAMILY RES.
  - ACTIVE ADULT RES.
  - OPEN SPACE
  - DETENTION POND
  - FLOODWAY CHANNEL
  - CLUBHOUSE
  - NEIGHBORHOOD PARK
  - 100 YEAR FLOOD PLAIN
  - SCHOOL SITE
  - ROAD RIGHT OF WAY
  - EASEMENT
  - COMMERCIAL
  - MIXED USE
  - NAC BOUNDARY
- IND = INDUSTRIAL  
 COMM. = COMMERCIAL  
 C.A.C. = COMMUNITY ACTIVITY CENTER  
 MU-C = MULTI USE COMMERCIAL
- O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED



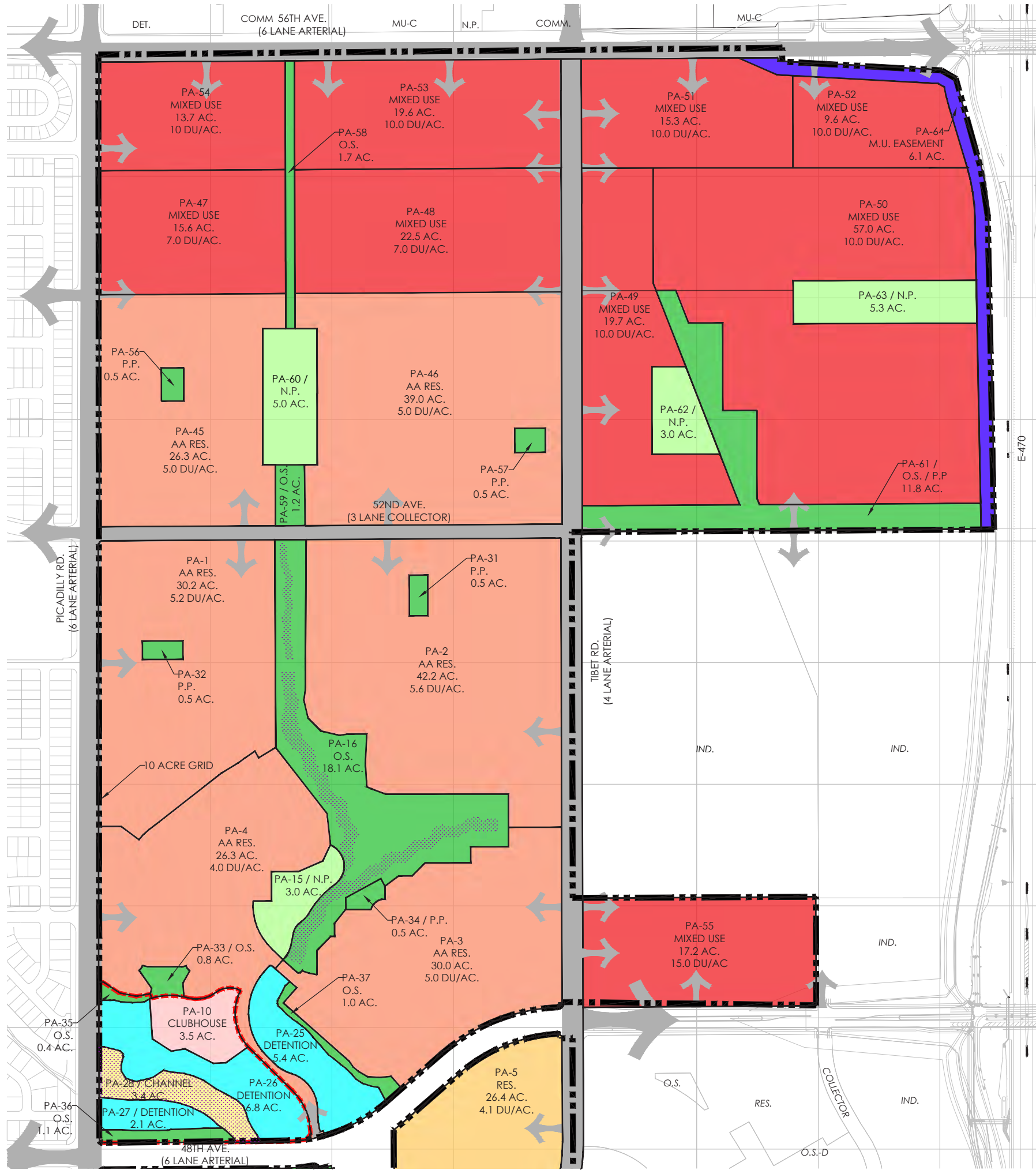
Sheet Title:  
**LAND USE PLAN  
 OVERALL**  
 Land Use Map, Matrix and  
 Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master  
 Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY  
 RANCH**

July 24, 2023

Tab 8.4

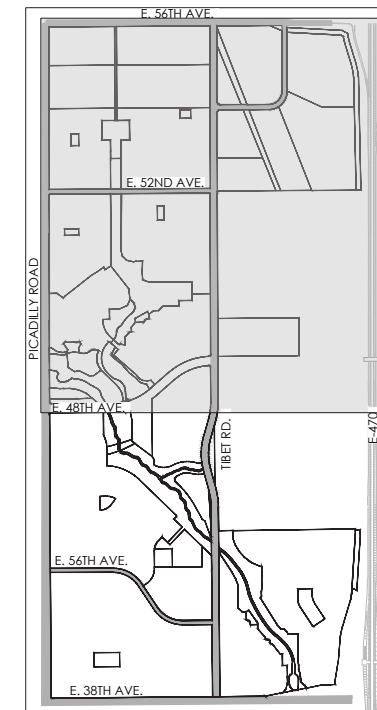


LEGEND

- |                      |                                    |
|----------------------|------------------------------------|
| SINGLE FAMILY RES.   | SCHOOL SITE                        |
| ACTIVE ADULT RES.    | ROAD RIGHT OF WAY                  |
| OPEN SPACE           | EASEMENT                           |
| DETENTION POND       | COMMERCIAL                         |
| FLOODWAY CHANNEL     | MIXED USE                          |
| CLUBHOUSE            | NAC BOUNDARY                       |
| NEIGHBORHOOD PARK    | IND = INDUSTRIAL                   |
| 100 YEAR FLOOD PLAIN | COMM. = COMMERCIAL                 |
|                      | C.A.C. = COMMUNITY ACTIVITY CENTER |
|                      | MU-C = MULTI USE COMMERCIAL        |

O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED

KEY MAP

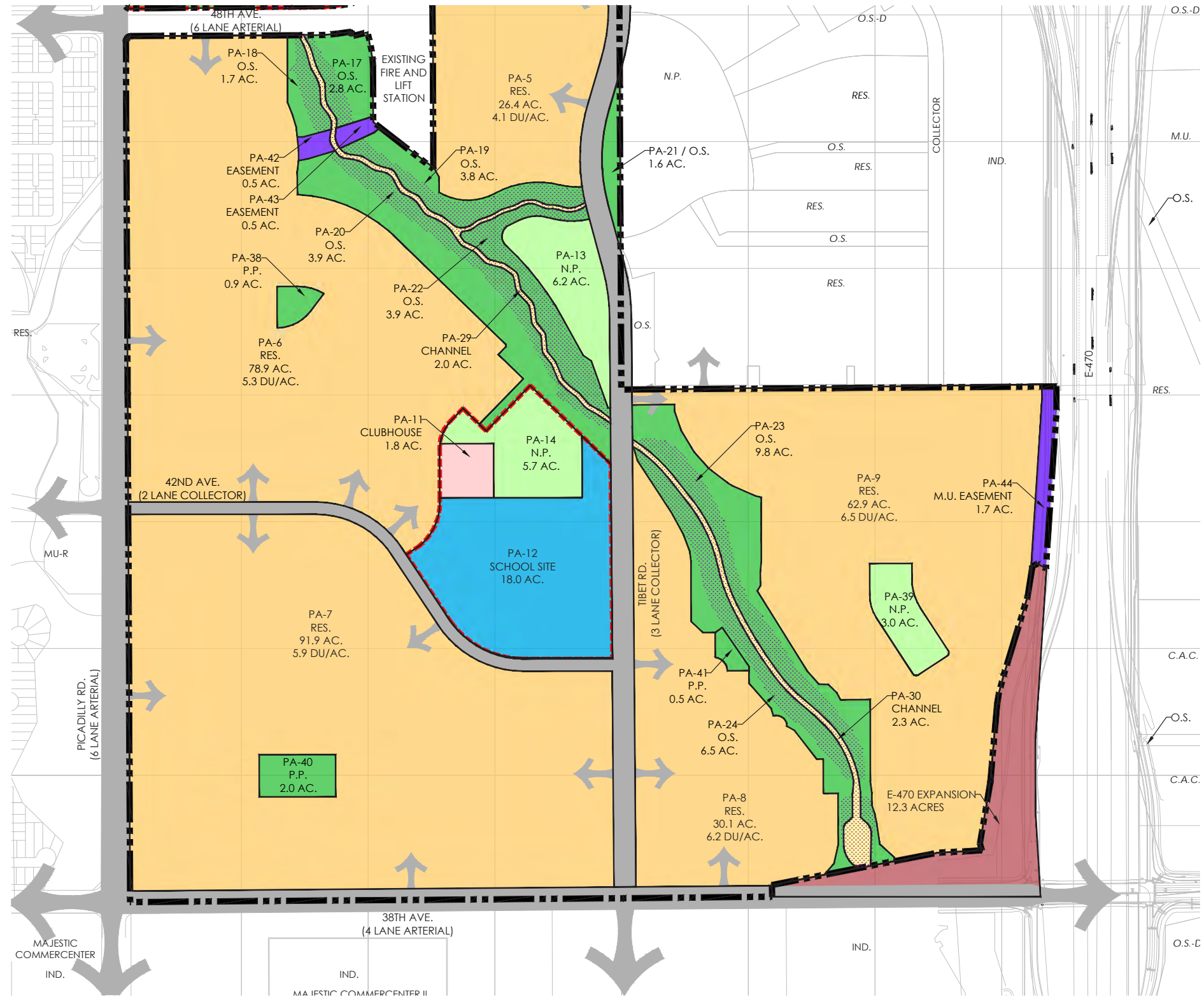


Sheet Title:  
**LAND USE PLAN SHEET 1**  
 Land Use Map, Matrix and Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY RANCH**

TAB 8.4

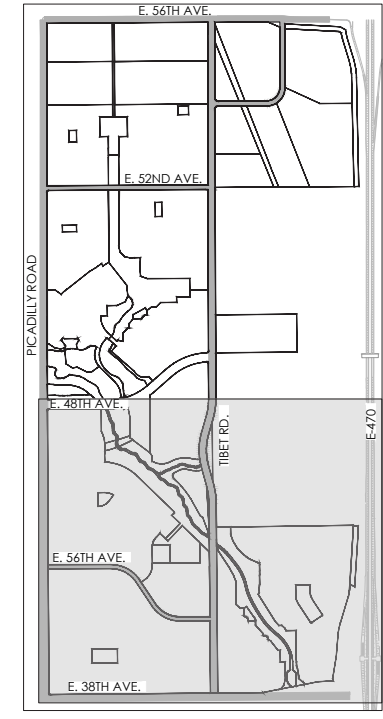


LEGEND

- SINGLE FAMILY RES.
  - ACTIVE ADULT RES.
  - OPEN SPACE
  - DETENTION POND
  - FLOODWAY CHANNEL
  - CLUBHOUSE
  - NEIGHBORHOOD PARK
  - 100 YEAR FLOOD PLAIN
  - SCHOOL SITE
  - ROAD RIGHT OF WAY
  - EASEMENT
  - COMMERCIAL
  - MIXED USE
  - NAC BOUNDARY
- IND = INDUSTRIAL  
 COMM. = COMMERCIAL  
 C.A.C. = COMMUNITY ACTIVITY CENTER  
 MU-C = MULTI USE COMMERCIAL

O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED

KEY MAP

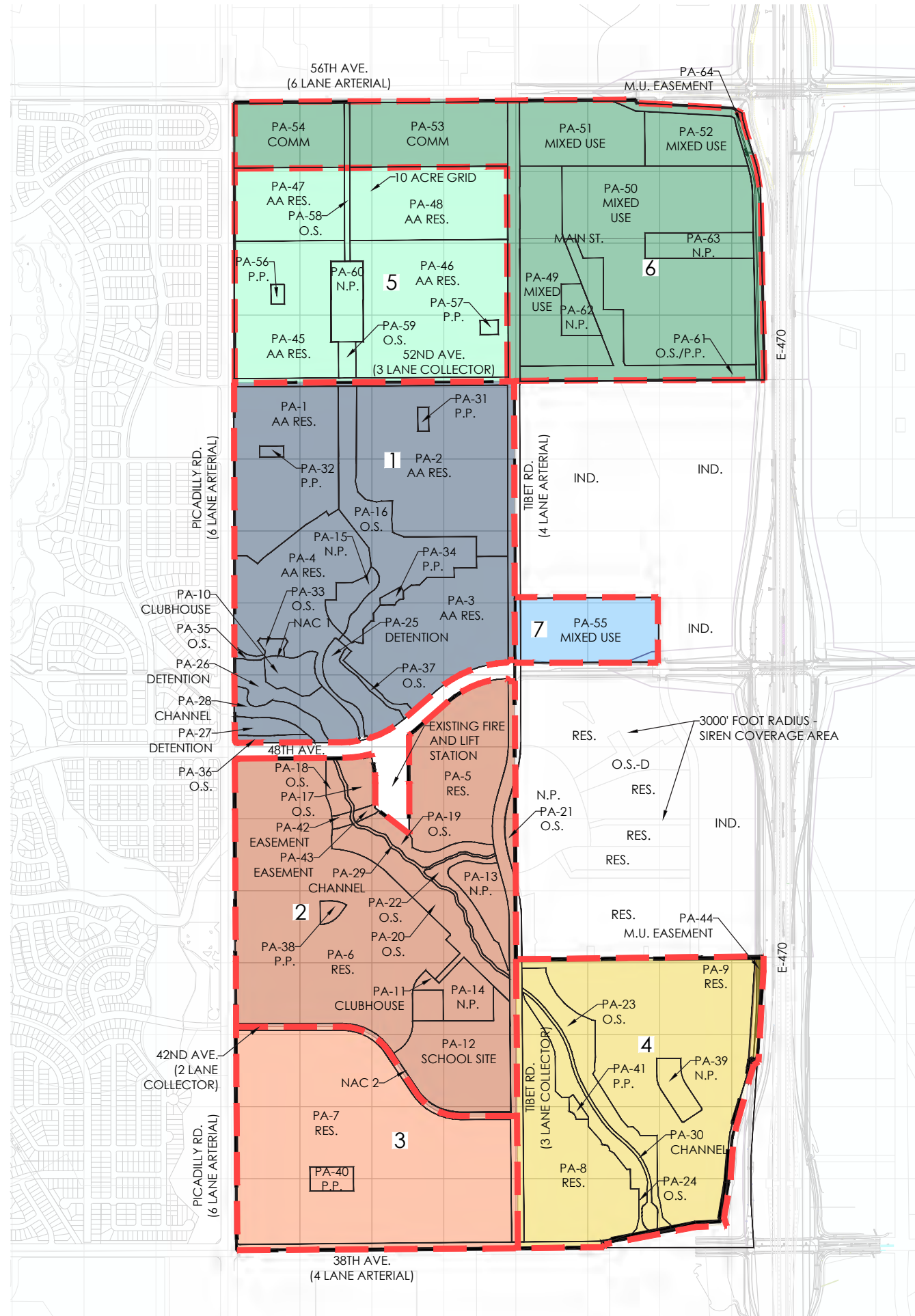


Sheet Title:  
**LAND USE PLAN SHEET 2**  
 Land Use Map, Matrix and Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY RANCH**

TAB 8.5



LEGEND

- NEIGHBORHOOD BOUNDARY
- O.S. = OPEN SPACE
- N.P. = NEIGHBORHOOD PARK
- P.P. = POCKET PARK
- RES. = RESIDENTIAL
- IND. = INDUSTRIAL

Neighborhood	Size (AC)	North Boundary	South Boundary	East Boundary	West Boundary
1	180.7	52nd Ave	48th Ave	Tibet Road	Picadilly Road
2	174.7	48th Ave	42nd Ave	Tibet Road	Picadilly Road
3	101.8	42nd Ave	38th Ave	Tibet Road	Picadilly Road
4	115.1	44th Ave	38th Ave	E-470	Tibet Road
5	114.5	Neighborhood 6	52nd Ave	Tibet Road	Picadilly Road
6	171.3	56th Ave	Windler	E-470	Tibet/Picadilly Road
7	18.1	Windler	48th Ave	Windler	Tibet Road
Total	876.2				



Sheet Title:  
**NEIGHBORHOOD  
 DEFINITION PLAN**  
 Land Use Map, Matrix and  
 Standard Notes  
 Master Plan

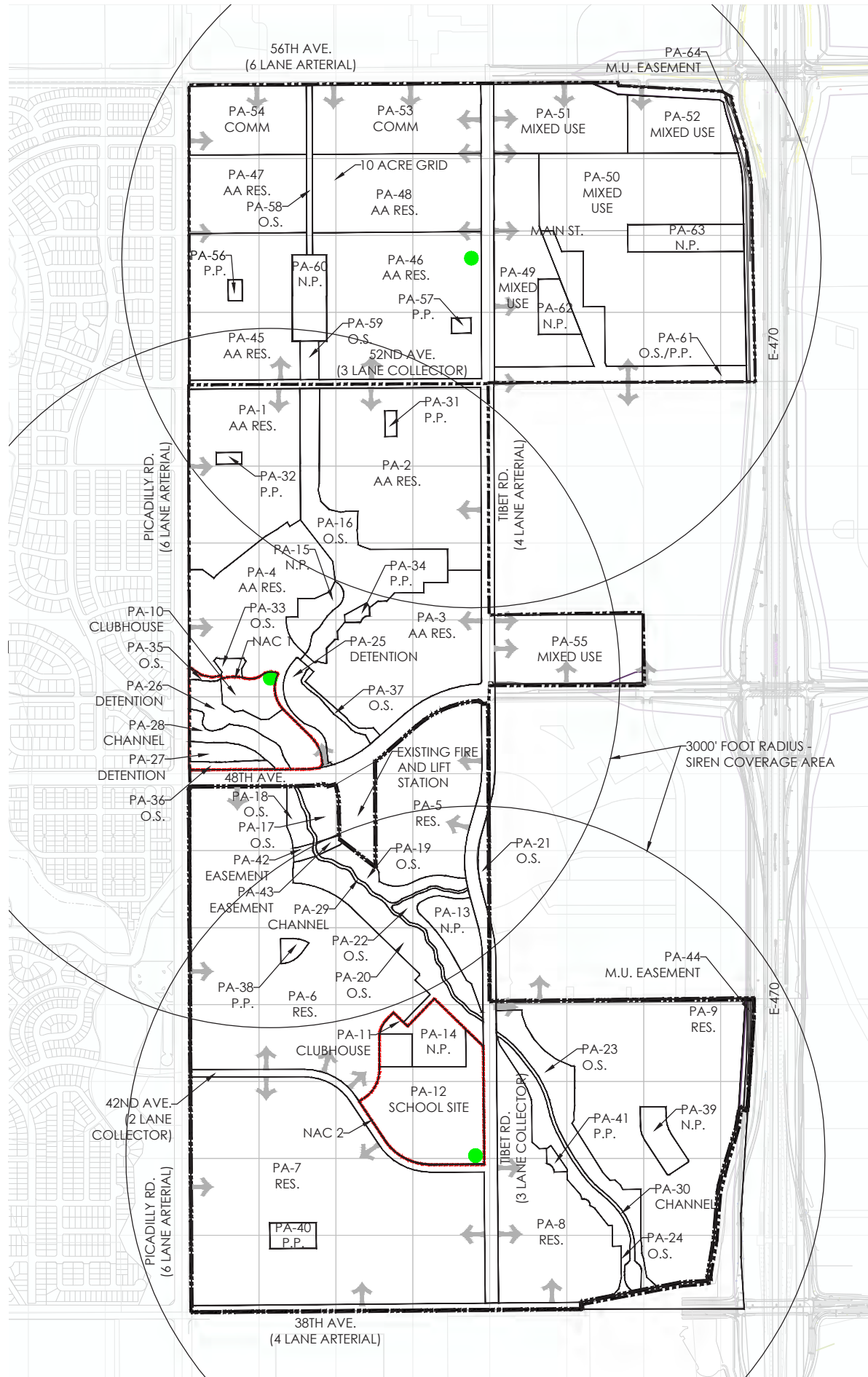
Project Title:  
**Green Valley Ranch Master  
 Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY  
 RANCH**

July 24, 2023

Tab 8.5

TAB 8.6



LEGEND

- ➔ PROPOSED ENTRY POINT
- WHELEN ALERT SIREN TOWER LOCATION
- ▭ DEDICATED FIRE STATION
- - - PROPERTY LINE
- ▭ (Red dashed) NEIGHBORHOOD ACTIVITY CENTER

O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL

STANDARD FIRE NOTES

1. In the event that a permanent fire station is not operational, the Aurora Fire Department may require that a temporary fire station be provided by the developer and/or annexing party. The property has been dedicated to the City and is no less than 1 ¼ acres with the location and dimensions such that optimal emergency response times can be achieved.
2. The City of Aurora requires that a permanent station be platted at the time of development approval. The property has been dedicated to the City and is no less than 1 ¼ acres with the location and dimensions such that optimal emergency response times can be achieved. Shared use sites (police, fire, etc) must be at least 8 acres in size and situated such that optimal emergency response times can be achieved. These sites shall be contiguous to collector streets.
3. Permanent or temporary fire stations: the exact placement of permanent or temporary fire stations will be determined and approved by the city of aurora's fire marshal to insure that coordinated coverage is provided within the city. For specific questions, the fire marshal can be reached through the fire department main switchboard, 303-326-8999, or 303-326-8986 (fax).
4. The FEMA requirement for outdoor emergency warning systems is a 60-70 foot monopole tower using an alert siren. The City of Aurora uses the Whelen Siren System. The land requirement for the tower is a 10' x 10' easement. Each siren covers approximately 3,000 radial feet at 70 db and is typically spaced one siren per square mile.
5. In newly annexed/developing areas of the city, sirens should be sited on every ½ section of ground (320 acres) or 6000 feet apart to provide edge to edge coverage.
6. The exact placement of sirens will be determined by the City of Aurora's Office of Emergency Management to insure that coordinated coverage is provided on a system wide basis. For specific questions, the Office of Emergency Management can be reached as 303-739-7636 (phone), 303-326-8986 (fax), or afd\_oem@auroragov.org



Sheet Title:  
**FIRE AND SAFETY EXHIBIT**  
 Land Use Map, Matrix and Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY RANCH**

July 24, 2023

Tab 8.6



Planning and Zoning Commission  
October 25, 2023

1. **General Business**

**7a-c. GREEN VALLEY RANCH MASTER PLAN AMENDMENT NO 2 –  
COMPREHENSIVE PLAN AMENDMENT AND ZONING MAP AMENDMENTS**

The applicant, Clayton Properties Group II, is requesting approval of a Comprehensive Plan Amendment to redesignate 78.8 acres from City Corridor Placetype to Emerging Neighborhood Placetype to support development in the proposed Green Valley Ranch Master Plan (GVRMP). Additionally, they are requesting to rezone 78.8 acres from Mixed-Use Airport (MU-A) to Medium Density Residential (R-2) and 28.3 acres from Mixed-Use Regional (MU-R) to Mixed-Use Airport (MU-A). The subject property is located south of 56<sup>th</sup> Avenue, between Picadilly Road and E-470, and is undeveloped. The site is included in the proposed Green Valley Ranch Master Plan Amendment 2.

The applicant proposes to amend the Comprehensive Plan to support the future development within the GVRMP, which consists of approximately 884 acres and is located between Picadilly Road and E-470 and E. 56<sup>th</sup> Avenue and E. 38<sup>th</sup> Avenue. The Comprehensive Plan amendment area, specifically located between E. 54<sup>th</sup> Avenue and E. 52<sup>nd</sup> Avenue, is designated City Corridor, and is bounded by City Corridor Placetype to the north and east, and Emerging Neighborhood to the south. The City and County of Denver is located west of Picadilly Road. The purpose of this request is to allow single-family residential uses, enabling the applicant to expand the existing active adult residential community located south of E. 52<sup>nd</sup> Avenue.

The applicant also proposes Zoning Map Amendments for two areas. The first area consists of 78.8 acres located between E. 54<sup>th</sup> Avenue and E. 52<sup>nd</sup> Avenue, west of Tibet. The applicant requests to rezone from MU-A to R-2. The proposed R-2 zone district will enable the applicant to develop more than 50% of the area with residential uses, which is a requirement in the existing MU-A zoning. The second area includes 28.3 acres located east of Tibet Road and proposes to rezone MU-R to MU-A to allow single-family residential in addition to commercial, retail, and office.

The subject property is included in the Green Valley Ranch Master Plan area, located west of E-470 to Picadilly Road, between E. 56<sup>th</sup> Avenue and E. 38<sup>th</sup> Avenue. The Master Plan was initially approved in 2008 and is being amended to update the proposed land uses for the subject property.

One-hundred five (105) adjacent property owners and seven (7) registered neighborhood organizations were notified of the application. No comments were received regarding the proposed amendments. No neighborhood meeting was held. No comments have been received as a result of the Planning and Zoning Commission Public Hearing Notice and signposting.



**Planning and Zoning Commission  
October 25, 2023**

**Testimony Given at the Hearing:**

Deborah Bickmire, Case Manager, gave a presentation of the item, including the staff recommendation.

Commissioner Hogan asked staff whether the project was within the Airport Influence Zone.

Ms. Bickmire confirmed that it is in the Airport Influence Zone and there is an aviation easement for the subject property.

Commissioner Hogan questioned if property owners would be notified that they live within an Airport Influence Zone.

Ms. Bickmire confirmed notifications would take place and commented that additional mitigation is required in the construction of the homes to accommodate noise that may impact the property from the airport.

Layla Rosales, Terracina Design, 10200 E Girard Avenue, Denver, CO 80231, the agent representing the applicant, gave a presentation of the item. Ms. Rosales spoke to the overall Green Valley Ranch Master Plan which will include 3,000 home sites. Ms. Rosales described the proposed amendment which is intended to expand residential and allow a transition to commercial uses through zoning map amendments.

Dave Carro, Oakwood Homes, 4908 Tower Road, Denver, CO 80249, applicant, was available for questions.

Brandon Wyszynski, Oakwood Homes, 4908 Tower Road, Denver, CO 80249, applicant, was available for questions.

Mike Weiher, Terracina Design, 10200 E Girard Avenue, Denver, CO 80231, agent representing the applicant, was available for questions.

The Planning Commission had no further questions.

There was no public comment.

**Planning Commission Results**

**AGENDA ITEM 7a – COMPREHENSIVE PLAN AMENDMENT**

A MOTION WAS MADE BY COMMISSIONER BANKA AND SECONDED BY COMMISSIONER GAISER.

MOVE TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE COMPREHENSIVE PLAN AMENDMENT FROM CITY CORRIDOR TO EMERGING NEIGHBORHOOD BECAUSE THE PROPOSAL COMPLIES WITH THE CRITERIA IN SECTION 146-5.4.1.A.3 OF THE UNIFIED DEVELOPMENT ORDINANCE FOR THE FOLLOWING REASONS:



**Planning and Zoning Commission  
October 25, 2023**

1. IT SUPPORTS THE PRACTICE OF RESERVING IDEAL LOCATIONS FOR SIGNIFICANT AND STRATEGIC COMMERCIAL DEVELOPMENT.
2. IT SUPPORTS THE GOAL OF INCREASING HIGH-QUALITY HOUSING OPTIONS OF ALL TYPES AND AT ALL PRICE LEVELS THROUGHOUT THE CITY THROUGH ONGOING COLLABORATION WITH THE DEVELOPMENT COMMUNITY.
3. THE AMENDMENT SUPPORTS THE GOAL OF USING HIGH-QUALITY COMMUNITY DESIGN TO CREATE VIBRANT AND ACTIVE PLACES WHERE PEOPLE CHOOSE TO LIVE AND WORK.

**Further Discussion:**

No further discussion occurred.

MOTION PASSED UNANIMOUSLY

**AGENDA ITEM 7b – ZONING MAP AMENDMENT**

A MOTION WAS MADE BY COMMISSIONER JETCHICK AND SECONDED BY COMMISSIONER BUSH.

MOVE TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE ZONING MAP AMENDMENT TO REZONE 78.8 ACRES FROM MIXED-USE AIRPORT (MU-A) TO MEDIUM DENSITY RESIDENTIAL (R-2) BECAUSE THE PROPOSAL COMPLIES WITH THE CRITERIA IN SECTION 146-5.4.1.C.3 OF THE UNIFIED DEVELOPMENT ORDINANCE FOR THE FOLLOWING REASONS:

1. IT SUPPORTS AURORA'S ECONOMY AND BUSINESS INTEGRATED WITH EMERGING NEIGHBORHOODS AS OUTLINED WITHIN THE COMPREHENSIVE PLAN.
2. IT IS ALIGNED WITH THE PROPOSED GREEN VALLEY RANCH MASTER PLAN AND ITS VISION FOR A MIXED-USE AND DIVERSE COMMUNITY PROVIDING OPPORTUNITIES TO WORK AND LIVE WITHIN THE AREA.
3. THE ZONING MAP AMENDMENT DOES NOT CHANGE THE USES PROPOSED WITHIN THE GREEN VALLEY RANCH MASTER PLAN THAT HAS BEEN DRAFTED TO MITIGATE COMPATIBILITY ISSUES THAT MIGHT ARISE WITH SURROUNDING DEVELOPMENT; AND,
4. IT WILL NOT CREATE ANY DISLOCATIONS OF TENANTS OR OCCUPANTS OF THE PROPERTY.

**Further Discussion:**

Commissioner Walls expressed support for the requested zoning map amendment.

MOTION PASSED UNANIMOUSLY





**Planning and Zoning Commission  
October 25, 2023**

**AGENDA ITEM 7c – ZONING MAP AMENDMENT**

A MOTION WAS MADE BY COMMISSIONER HOGAN AND SECONDED BY COMMISSIONER BANKA.

MOVE TO RECOMMEND APPROVAL TO THE CITY COUNCIL OF THE ZONING MAP AMENDMENT TO REZONE 28.3 ACRES FROM MIXED-USE REGIONAL (MU-R) TO MIXED-USE AIRPORT (MU-A) BECAUSE THE PROPOSAL COMPLIES WITH THE CRITERIA IN SECTION 146-5.4.1.C.3 OF THE UNIFIED DEVELOPMENT ORDINANCE FOR THE FOLLOWING REASONS:

1. IT SUPPORTS AURORA'S ECONOMY AND BUSINESS INTEGRATED WITH EMERGING NEIGHBORHOODS AS OUTLINED WITHIN THE COMPREHENSIVE PLAN.
2. IT IS ALIGNED WITH THE PROPOSED GREEN VALLEY RANCH MASTER PLAN AND ITS VISION FOR A MIXED-USE AND DIVERSE COMMUNITY PROVIDING OPPORTUNITIES TO WORK AND LIVE WITHIN THE AREA.
3. THE ZONING MAP AMENDMENT DOES NOT CHANGE THE USES PROPOSED WITHIN THE GREEN VALLEY RANCH MASTER PLAN THAT HAS BEEN DRAFTED TO MITIGATE COMPATIBILITY ISSUES THAT MIGHT ARISE WITH SURROUNDING DEVELOPMENT; AND,
4. IT WILL NOT CREATE ANY DISLOCATIONS OF TENANTS OR OCCUPANTS OF THE PROPERTY.

**Further Discussion:**

No further discussion occurred.

MOTION PASSED UNANIMOUSLY

ORDINANCE NO. 2023- \_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR A ZONING MAP AMENDMENT TO REZONE 78.8 ACRES OF LAND TO MEDIUM DENSITY RESIDENTIAL DISTRICT, LOCATED WEST OF TIBET ROAD, BETWEEN E 54<sup>TH</sup> AVENUE AND E 52<sup>ND</sup> AVENUE

WHEREAS, the applicant has requested that 78.8 acres of land, more or less, located west of Tibet Road, between E 54<sup>th</sup> Avenue and E 52<sup>nd</sup> Avenue, County of Adams, State of Colorado (the “Property”), be rezoned from Mixed-Use Airport (MU-A) to Medium Density Residential (R-2); and

WHEREAS, Section 146-5.4.1.C.3 of the Uniform Development Ordinance provides that all applications for the rezoning of property within the City of Aurora, Colorado (the “City”), shall be presented for a public hearing, both to the Planning and Zoning Commission, who shall render a recommendation to City Council, and to City Council for final decision; and

WHEREAS, on October 25, 2023, following a public hearing, the Planning and Zoning Commission voted to recommend the rezoning of the Property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. Based on the evidence presented at tonight’s public hearing, City Council finds and determines that: the rezoning is consistent with the spirit and intent of the Comprehensive Plan, is compatible with surrounding development, and would not result in a significant dislocation of tenants or occupants of the property.

Section 2. The Property, as more particularly described in “Exhibit A” attached hereto and incorporated herein, is zoned Medium Density Residential (R-2) and the zoning map is hereby amended in accordance with said zoning.

Section 3. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 4. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

PASSED AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*Lena McClelland* <sup>RLA</sup>

\_\_\_\_\_  
LENA MCCLELLAND, Assistant City Attorney



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Green Valley Ranch Zoning Map Amendment – MU-R to MU-A
<b>Item Initiator:</b> Deborah Bickmire, Senior Planner, Planning and Development Services
<b>Staff Source/Legal Source:</b> Deborah Bickmire, Senior Planner, Planning and Development Services / Lena McClelland, Assistant City Attorney-Planning, City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 5.0--Be a great place to locate, expand and operate a business and provide for well-planned growth and development

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 11/27/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** 12/4/2023

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REZONE A PARCEL OF LAND MEASURING 28.3 ACRES MORE OR LESS AT THE NORTHEAST CORNER OF FUTURE TIBET ROAD AND FUTURE E. 52ND AVENUE, FROM MIXED USE-REGIONAL DISTRICT (MU-R) TO MIXED USE-AIRPORT DISTRICT (MU-A) AND AMENDING THE ZONING MAP ACCORDINGLY (GREEN VALLEY RANCH ZONING MAP AMENDMENT – MU-R TO MU-A)

Deborah Bickmire, Senior Planner, Planning and Development Services / Lena McClelland, Assistant City Attorney, City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only

- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

---

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Planning and Zoning Commission

**Policy Committee Date:** 10/25/2023

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval  
 Forwarded Without Recommendation  Minutes Not Available  
 Minutes Attached

---

**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The Planning and Zoning Commission heard the applicant's request for a Zoning Map Amendment in a public hearing on October 25, 2023 and voted unanimously (6-0) to recommend approval to City Council. Commissioner Ahern was absent.

---

**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

The applicant, Clayton Properties Group II, is requesting approval to rezone 28.3 acres from Mixed Use-Regional (MU-R) to Mixed Use-Airport (MU-A). The subject property is located south of 56th Avenue, north of future E. 52nd Avenue, between N. Tibet Road and E-470. The site is included in the proposed Green Valley Ranch Master Plan Amendment 2 (GVRMP) and is undeveloped. This is second of two proposed rezoning requests.

The applicant proposes the rezone to support future development within the GVRMP, which consists of approximately 884 acres and is located between Picadilly Road and E-470 and E. 56th Avenue and E. 38th Avenue. The area between Tibet and E-470 is bifurcated by a large gas easement. The proposed rezone of the area west of the gas easement is intended to act as a transition to the higher density development anticipated in the MU-R district.

Staff supports the proposed rezone because the integrity of the commercial corridor and development of a regional activity center will be maintained.

The proposed Zoning Map Amendment complies with the approval criteria found in Section 146-4.5.1.C.3 because it supports Aurora's economy and business integrated with emerging neighborhoods as outlined within the Comprehensive Plan; it is aligned with the proposed Green Valley Ranch Master Plan and its vision for a mixed-use and diverse community providing opportunities to work and live within the area; the zoning map amendment does not change the uses proposed within the Green Valley Ranch Master Plan that has been drafted to mitigate compatibility issues that might arise with surrounding development; and, it will not create any dislocations of tenants or occupants of the property.

---

**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact  Budgeted Expenditure Impact  Non-Budgeted Expenditure Impact  
 Workload Impact  No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

---

**QUESTIONS FOR COUNCIL**

Does council wish to approve the proposed zoning map amendment?

---

**LEGAL COMMENTS**

The City Council is the governing body of the City and has the authority to approve the Official Zoning Map and amendments to that map. (UDO §146-5.1.1.B)

The City Council shall conduct a public hearing on the application. (UDO §146-5.4.1.C.2.c)

Changes to the Zoning Map for individual parcels shall only be approved if City Council finds that the change to the Zoning Map is required because of changed conditions or circumstances on the property or the surrounding area and (a) the applicant has demonstrated that the proposed rezoning is consistent with the spirit and intent of the Comprehensive Plan, the other policies and plans adopted by the City Council, and with the purpose statement of the proposed new zone district(s); (b) the applicant has demonstrated that the size, scale, height, density, and multi-modal traffic impacts of the proposed rezoning are compatible with surrounding development or can be made compatible through approval conditions; and (c) the application demonstrates that the change in zoning will not create significant dislocations of tenants or occupants of the property, or that any impacts are outweighed by other public benefits or progress toward other Comprehensive Plan goals that would be achieved by approval of the application. (UDO §146-5.4.1.C.3.a.ii).

Membership of City Council will change prior to final reading of this item. Council Members should be cautious about voting on items if they were not present at the public hearing. If a Council Member wishes to vote on an item for which they were not present at the public hearing they should thoroughly review the record, including the minutes, any video, and recordings, if available. If the Council Member does not believe they are able to review the entire record from the public hearing they should refrain from voting and abstain. In that case, there will be one less vote available for approval. (McClelland)

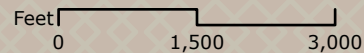


**Green Valley Ranch East  
Comprehensive Plan Amendment and  
Zoning Map Amendments**

City of Aurora, Colorado



*Aurora is  
Worth Discovering!*



**Planning &  
Development Services**  
15151 E. Alameda Parkway  
Aurora CO 80012 USA  
AuroraGov.org  
303.739.7217  
GIS@auroragov.org



October 17, 2023

## **Green Valley Master Plan – Comprehensive Plan Amendment and Zoning Map Amendment Request**

On behalf of Clayton Properties Group II, Inc., we are pleased to submit our proposed Second Amendment to the Green Valley Ranch Master Plan (MP), Comprehensive Plan Amendment and Rezone for the City of Aurora's review.

The Green Valley Ranch MP (formerly Framework Development Plan) was approved in November of 2008 for 2,500 acres. The MP was amended in 2018 to modify the land uses and open space on 588 acres located between 38<sup>th</sup> Avenue and 52<sup>nd</sup> Avenue west of E-470 (Amendment 1). Amendment 2 proposes modified planning areas on the 301 acres located between Picadilly Road and E-470; and 56<sup>th</sup> Avenue and 52 Avenue. This Amendment revises the total MP area from approximately 2,500 acres to 884.1 acres.

The Green Valley Ranch MP is located between Picadilly Road to the west, and E-470 to the east and between 38<sup>th</sup> Ave to the south, and 56<sup>th</sup> Ave to the north. The Comprehensive Plan designates the area between 38<sup>th</sup> Ave. and 52<sup>nd</sup> Ave. as Emerging Neighborhood placetype, and City Corridor placetype between 52<sup>nd</sup> Ave. and 56<sup>th</sup> Ave. The site is bordered by City Corridor placetype to the north of 56<sup>th</sup> Ave, Industry Hub placetype south of 38<sup>th</sup> Ave., City Corridor to the east across E-470, and City and County of Denver to the west. See Exhibit A for existing placetypes.

The applicant is requesting to amend the Comprehensive Plan to re-designate 78.8 acres from City Corridor to Emerging Neighborhood. The area is bounded by Picadilly Road along the west, Tibet Road along the east, 52<sup>nd</sup> Ave to the south, and 54<sup>th</sup> Ave to the north. This amendment is proposed to better align with the proposed uses that will have an emphasis on residential. Our intent is to extend the active adult community to the north while maintaining the City Corridor placetype along the 56<sup>th</sup> Ave. corridor for commercial development that will support both nearby residential communities and mixed-use areas. An open space corridor will act as a link between the active adult communities while also including a neighborhood park. The City Corridor placetype will include a wide range of uses, including commercial, retail, office, institutional, and multifamily residential consistent with that zoning. See Exhibit B for proposed placetypes.

The proposed comprehensive plan amendment stays consistent with intent of the existing placetypes by maintaining City Corridor along 56<sup>th</sup> Ave., a major arterial, and E-470. The extension of Emerging Neighborhood north of 52<sup>nd</sup> Ave. is compatible with the existing Active Adult neighborhood south of 52<sup>nd</sup> Ave as well as the single-family residential neighborhoods to the west in the City and County of Denver.



## Green Valley Master Plan – Rezone Request

We are also requesting to rezone two parcels located between Picadilly Rd. and E470, and north of 52<sup>nd</sup> Ave to 56<sup>th</sup> Ave.

We are requesting to modify 78.8 Ac. located from Picadilly Road to Tibet Road and 52<sup>nd</sup> Ave to 56<sup>th</sup> Ave, from Mixed-Use Airport (MU-A) to Medium Density Residential (R-2) zone district. This will allow for the expansion of the active adult neighborhood to meet market demand. See Exhibit D for proposed zoning.

We are also requesting to amend the zoning for 28.3 acres from Mixed Use Regional (MU-R) to Mixed Use Airport (MU-A). This area is located east of Tibet Road to the CIG easement, between 52<sup>nd</sup> Ave and 55<sup>th</sup> Ave. We are requesting to change this to MU-A zone district to allow for single family detached homes east of Tibet Road. This would allow for a more diverse residential neighborhood who will ultimately be the main users of the surrounding mixed-use area.

The site is bordered by MU-A (Mixed Use-Airport) to the north, R-2 (Medium Density Residential) to the south, and MU-R (Mixed Use-Regional) to the east (of E-470). See Exhibit C for existing zoning.

We believe the proposed zoning is compatible with the surrounding zoning districts by maintaining MU-R and MU-A along 56<sup>th</sup> and E-470 for regional commercial, retail and service uses. Residential single-family and multi-family uses are permitted as part of the overall mix of uses in the MU-A zoning district. The extension of R-2 north of 52<sup>nd</sup> Ave. is compatible with the existing residential uses to the south as well as the single-family residential neighborhoods to the west in Denver. 52<sup>nd</sup> Ave will be classified as a collector street that connects Picadilly Road to Tibet Road which will enhance connectivity thru the site.

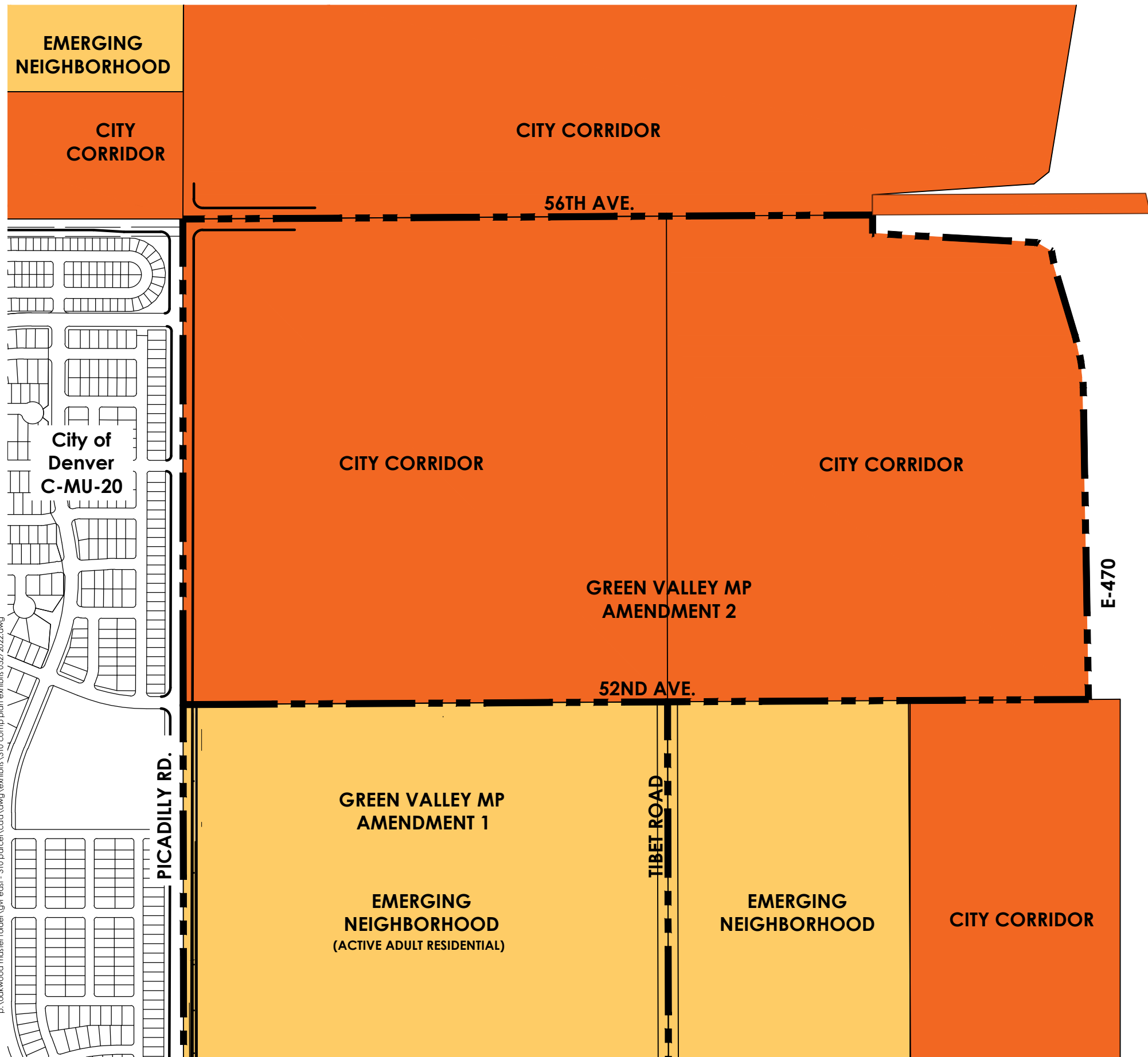
### *Conformance with Rezone Criteria:*

- i. *The change to the Zoning Map is needed to correct an error (change in the character of surrounding areas does not constitute an error in the map); or*
    - There is no error
  - ii. *The change to the Zoning Map is required because of changed conditions or circumstances on the property or in the surrounding area and:*
    - More demand for residential development and less demand for commercial and office space. This rezone request is in response to the changing demands within the region.
- a. *The applicant has demonstrated that the proposed initial zoning or rezoning is consistent with the spirit and intent of the Comprehensive Plan, with other policies and plans adopted by the City Council, and with the purpose statement of the proposed new zone district(s);*
- The proposed rezone keeps with the Comprehensive Plan City Corridor Placetype by maintaining the MU-R and MU-A along 56<sup>th</sup> and E-470 which will promote regional commercial, retail and service uses. Residential single-family and multi-family uses are permitted as part of the overall mix of uses in the MU-A zoning district. Proposed residential uses in MU-A and R-2 will be located outside of the commercial corridor. The

extension of R-2 to the north is compatible with the existing Active Adult residential south of 52<sup>nd</sup> Ave as well as the single-family residential neighborhoods to the west in Denver. This extension of R-2 is accompanied by a concurrent Comprehensive Plan amendment which extends Emerging Neighborhood Placetype north.

- b. *The applicant has demonstrated that the size, scale, height, density, and multi-modal traffic impacts of the proposed initial zoning or rezoning are compatible with surrounding development or can be made compatible with surrounding development through approval conditions; and*
- The property is currently vacant and the surrounding property has not been developed, therefore, there should be little to no effect on surrounding development.
- c. *The application demonstrates that the change in zoning will not create significant dislocations of tenants or occupants of the property, or that any impacts are outweighed by other public benefits or progress toward other Comprehensive Plan goals that would be achieved by approval of the application.*
- The property in question is currently vacant and no dislocation of tenants or occupants will occur.

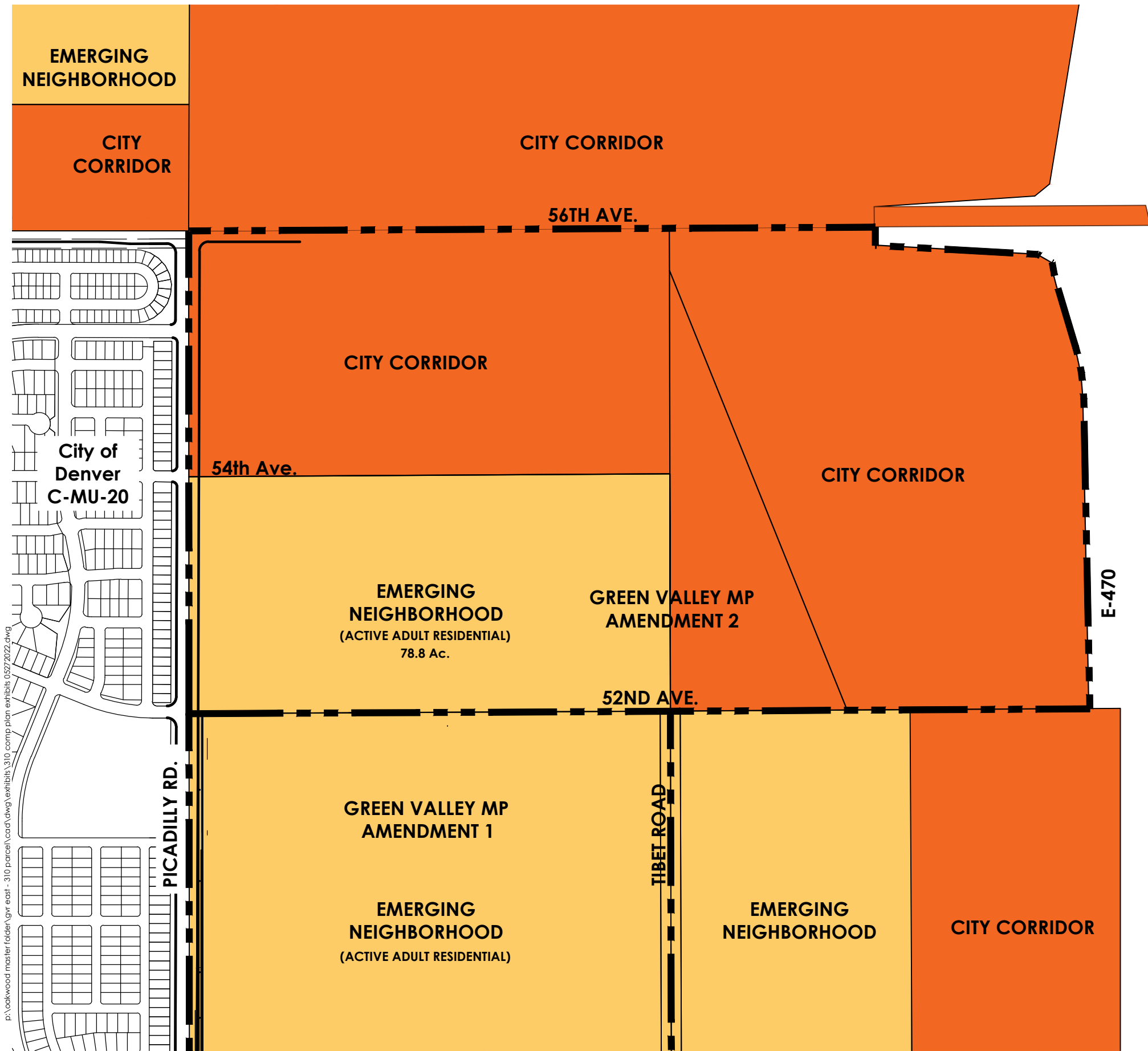
We are excited about the opportunity to continue work in this rapidly changing E-470 Corridor. It is our intent to provide the framework to expand upon the successful Green Valley Ranch master-planned community and create long lasting value, which is an important component in implementing the City of Aurora's future for this area.



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# Green Valley Master Plan

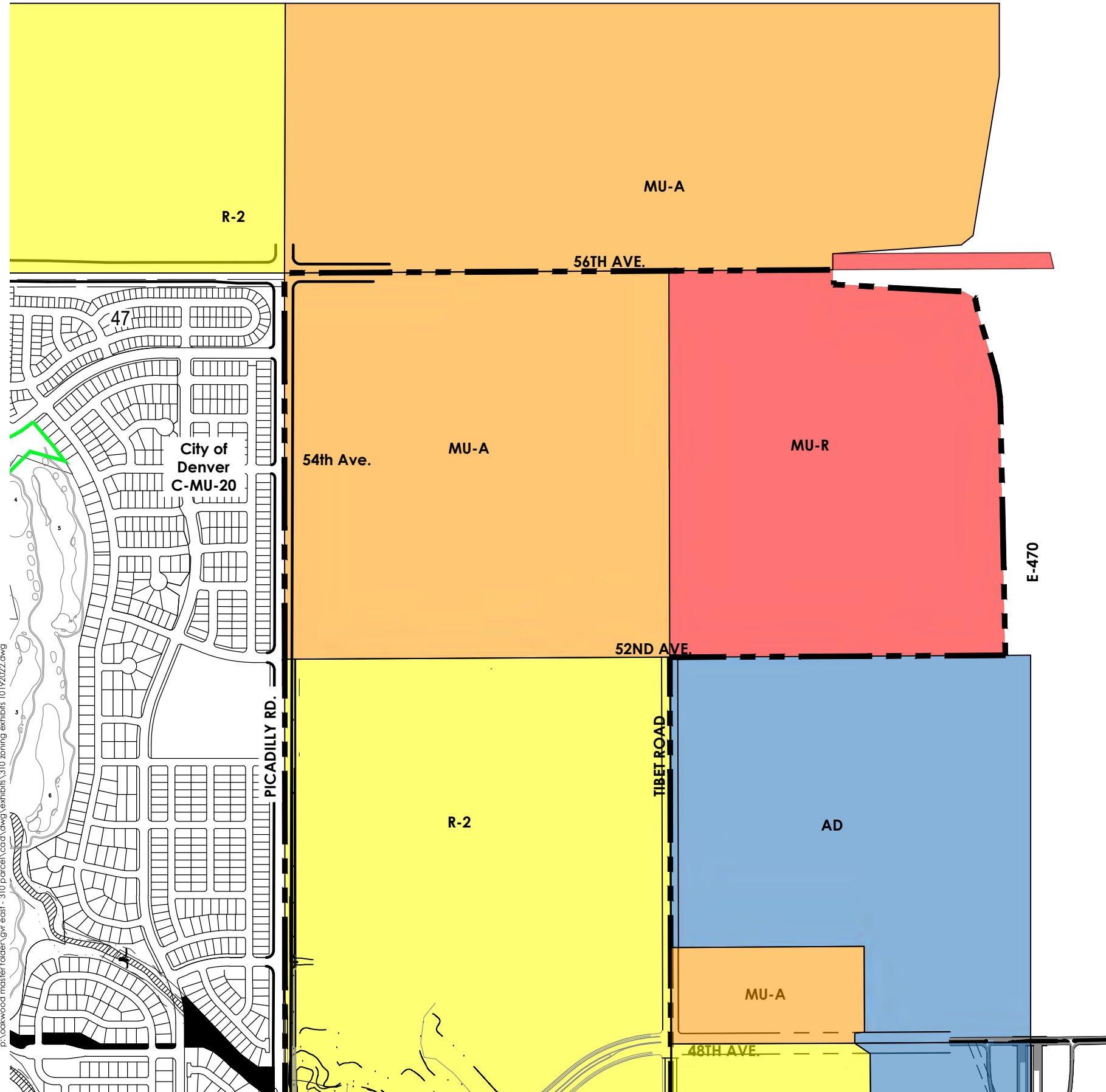
## EXHIBIT A: EXISTING COMPREHENSIVE PLAN PLACETYPE DESIGNATIONS



# Green Valley Master Plan

## EXHIBIT B: PROPOSED COMPREHENSIVE PLAN PLACETYPE DESIGNATION

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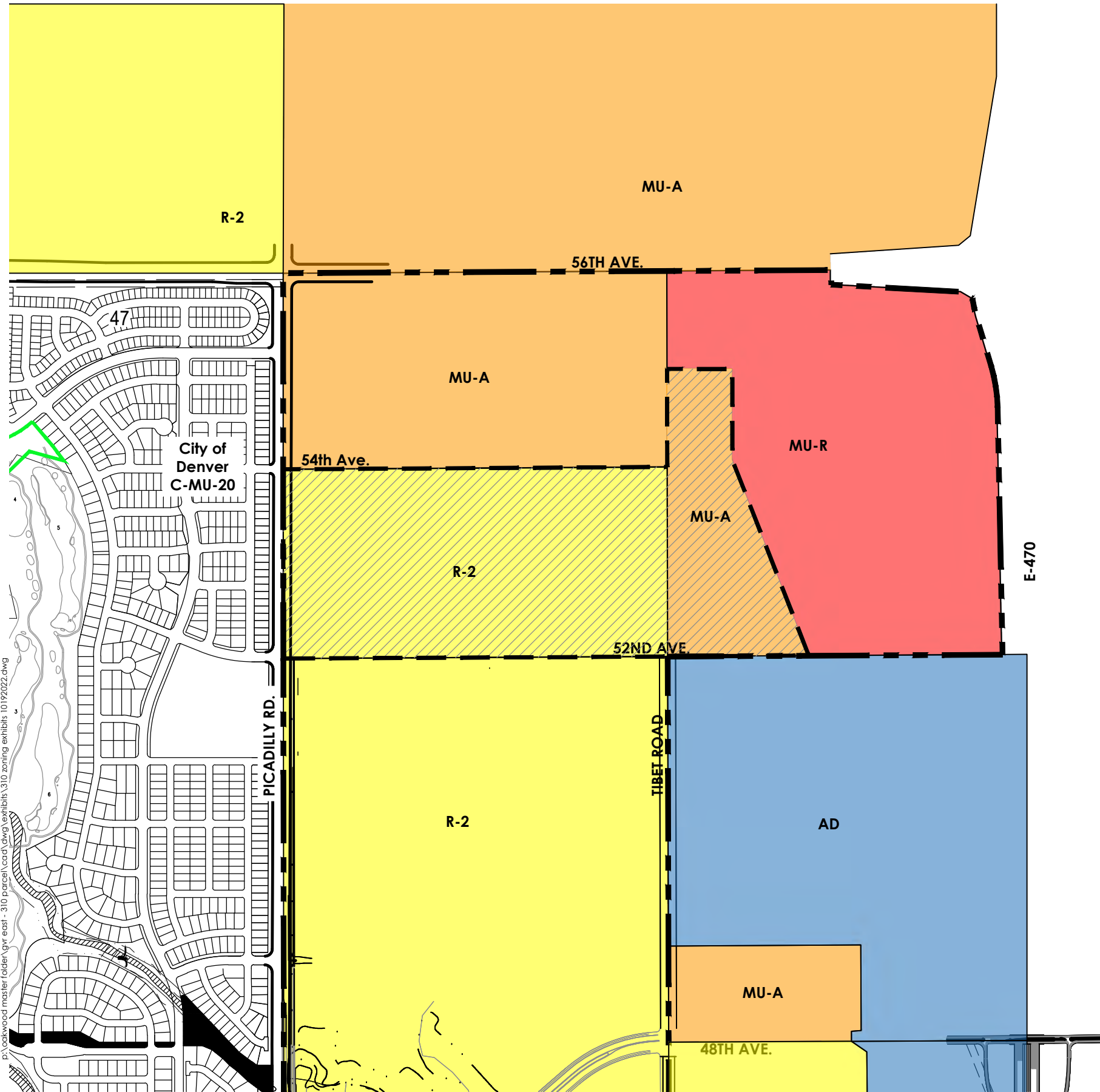
- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS

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# Green Valley Master Plan

## EXHIBIT C: EXISTING ZONING DESIGNATION





- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS

Rezone Parcels	Acres	Zone District(s)
Green Valley Amendment 2 (SE 1/4)	28.3	MU-A
Green Valley Amendment 2 (SW 1/4)	78.8	R-2
<b>Total</b>	<b>107.1</b>	

# Green Valley Master Plan

## EXHIBIT D: PROPOSED ZONING DESIGNATION



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## EXHIBIT A

## ZONING MAP AMENDMENT

A PORTION OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 66 WEST, SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO, **TO BE DESIGNATED AS R-2**, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER, WHENCE THE EAST LINE OF SAID NORTHWEST QUARTER BEARS NORTH 00°07'57" WEST, WITH ALL BEARINGS REFERENCED HEREIN BEING RELATIVE THERETO;

THENCE ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, SOUTH 89°40'33" WEST, A DISTANCE OF 2,639.49 FEET TO THE SOUTHWEST CORNER THEREOF;

THENCE DEPARTING SAID SOUTH LINE ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, NORTH 00°01'58" WEST, A DISTANCE OF 1,299.62 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89°39'00" EAST, A DISTANCE OF 2,637.23 FEET TO THE EAST LINE OF SAID NORTHWEST QUARTER;

THENCE ALONG SAID EAST LINE, SOUTH 00°07'57" EAST, A DISTANCE OF 1,300.81 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 78.751 ACRES, (3,430,398 SQUARE FEET), MORE OR LESS.

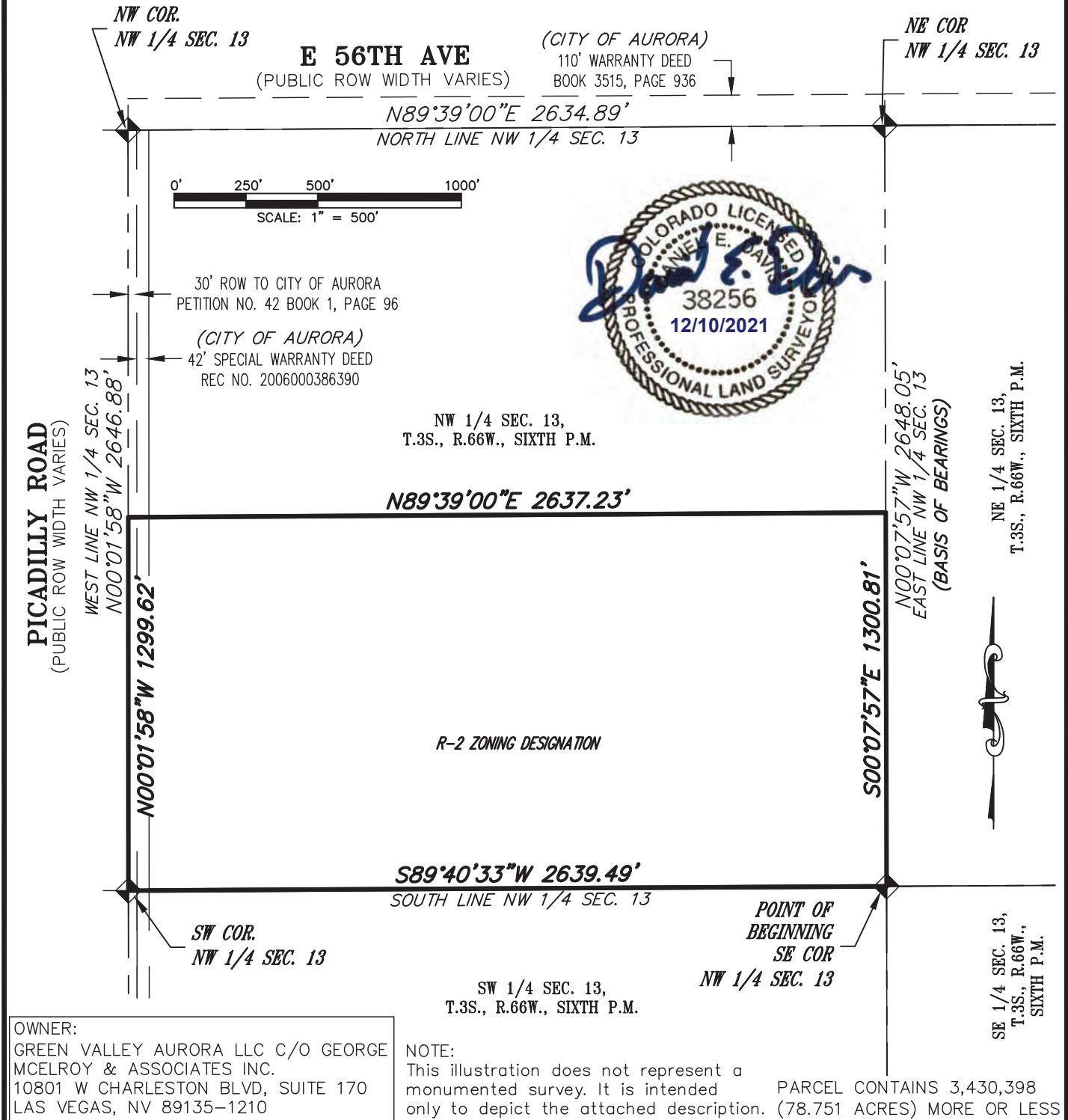
ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

ILLUSTRATION ATTACHED AND MADE A PART HEREOF.



DANIEL E. DAVIS, PLS 38256  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122

ILLUSTRATION FOR EXHIBIT A  
SHEET 2 OF 2



<b>CITY OF AURORA, COLORADO</b>		
DRAWN BY: DED	SCALE: 1"=500'	R-0-W FILE NO.
CHECKED BY: JRW	DATE: 12/3/2021	JOB NO. 19319-28

**A ZONING MAP AMENDMENT**  
BEING A PART OF THE NW 1/4 OF SEC. 13  
T.3S., R.66W., SIXTH P.M.  
CITY OF AURORA, COUNTY OF ADAMS  
STATE OF COLORADO



**EXHIBIT B****ZONING MAP AMENDMENT**

A PORTION OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 66 WEST, SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO, **TO BE DESIGNATED AS MU-(A)**, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER, WHENCE THE WEST LINE OF SAID NORTHEAST QUARTER BEARS NORTH 00°07'57" WEST, WITH ALL BEARINGS REFERENCED HEREIN BEING RELATIVE THERETO;

THENCE ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, NORTH 00°07'57" WEST, A DISTANCE OF 1,974.19 FEET;

THENCE DEPARTING SAID WEST LINE, SOUTH 89°54'35" EAST, A DISTANCE OF 448.48 FEET;

THENCE SOUTH 00°00'11" EAST, A DISTANCE OF 624.34 FEET;

THENCE SOUTH 21°19'41" EAST, A DISTANCE OF 626.80 FEET;

THENCE SOUTH 21°20'00" EAST, A DISTANCE OF 815.62 FEET TO THE SOUTH LINE OF SAID NORTHEAST QUARTER;

THENCE ALONG SAID SOUTH LINE, SOUTH 89°40'22" WEST, A DISTANCE OF 968.65 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 28.316 ACRES, (1,233,463 SQUARE FEET), MORE OR LESS.

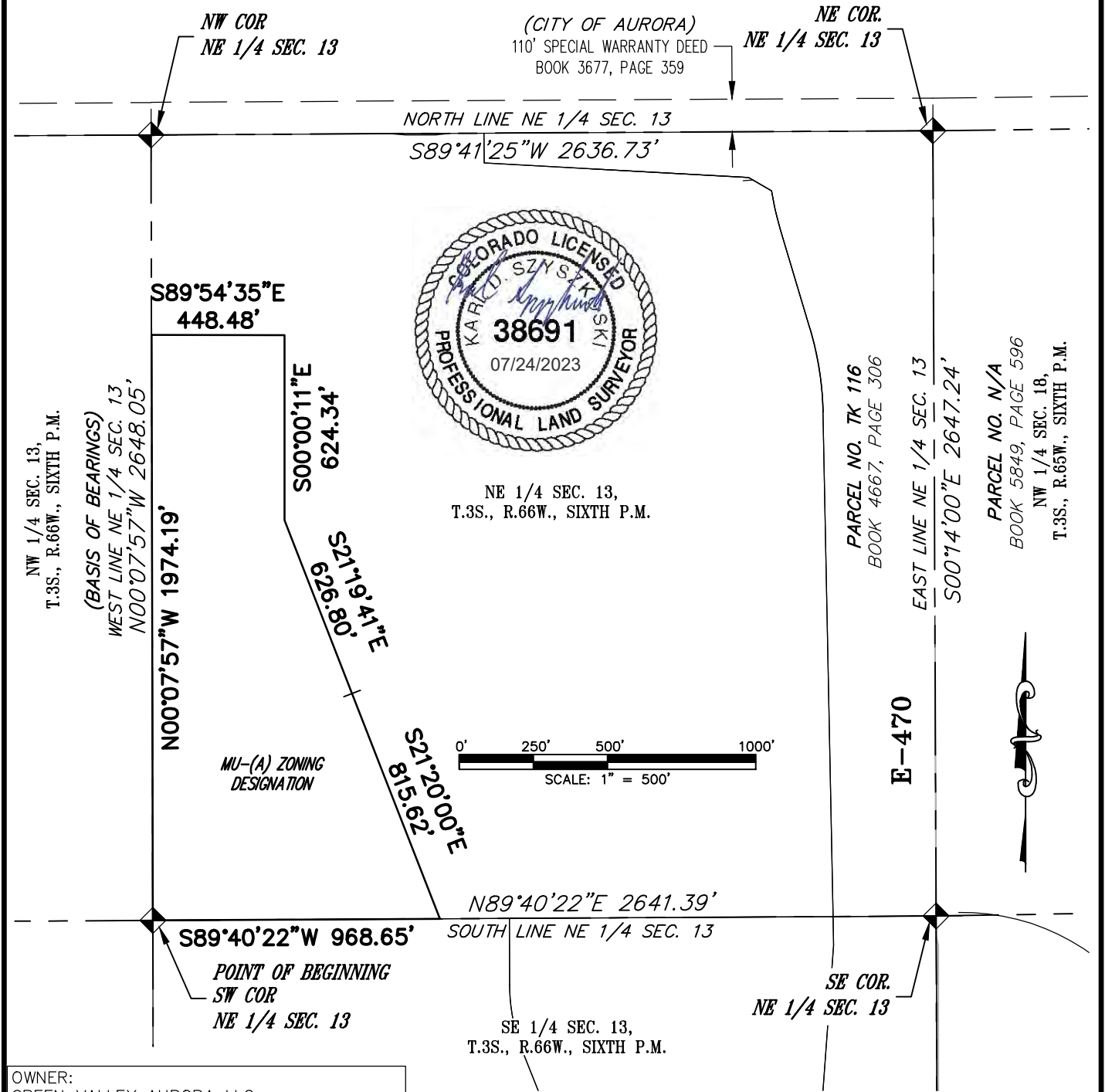
ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

ILLUSTRATION ATTACHED AND MADE A PART HEREOF.

KARL SZYSZKOSKI, PLS 38691  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122



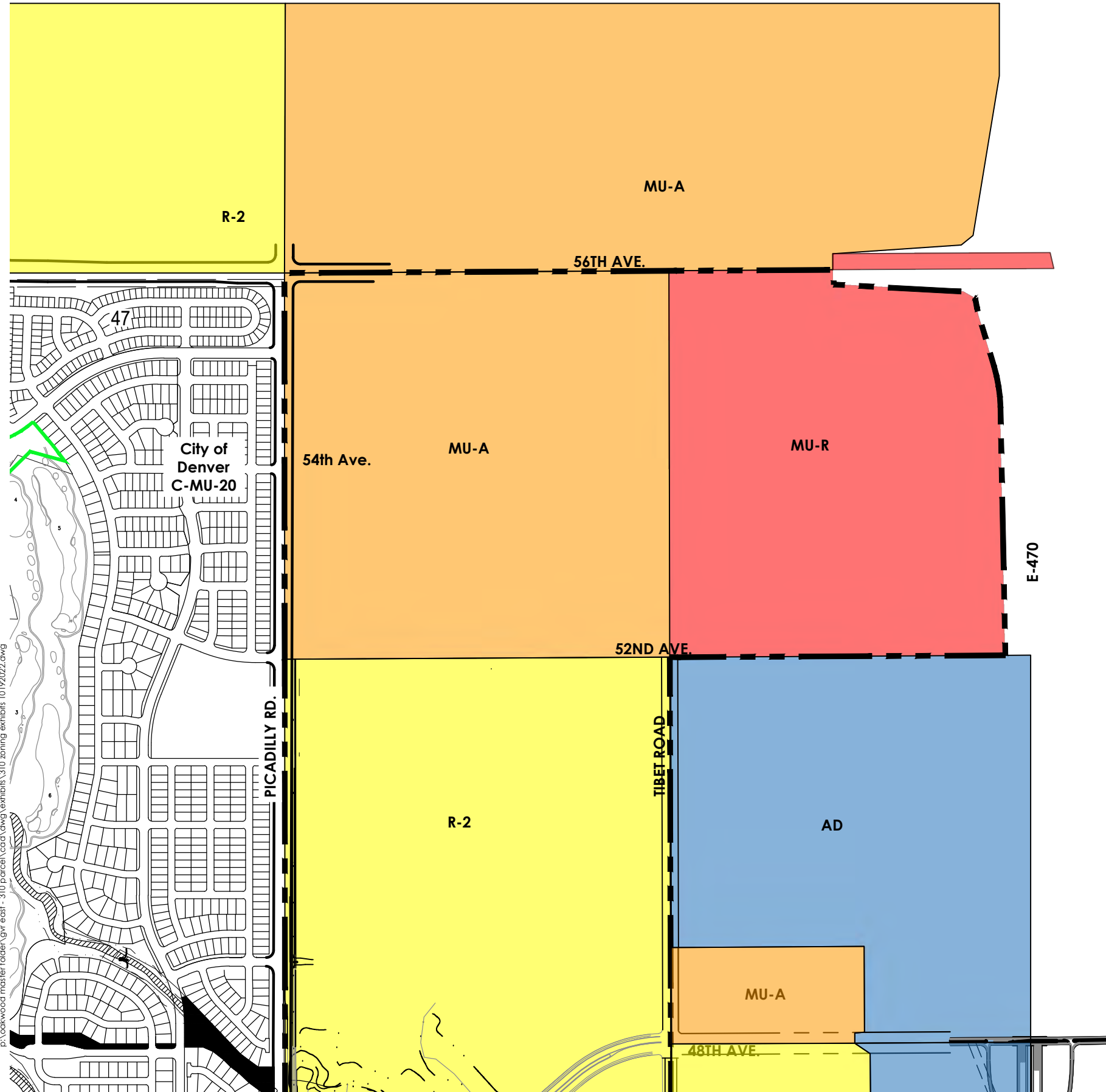
ILLUSTRATION FOR EXHIBIT B  
SHEET 2 OF 2



OWNER:  
GREEN VALLEY AURORA LLC  
C/O AWH VENTURES INC  
1700 S PAVILION CENTER DR STE 300  
LAS VEGAS, NV 89135-1862

NOTE:  
This illustration does not represent a  
monumented survey. It is intended  
only to depict the attached description. PARCEL CONTAINS 1,233,463  
(28.316 ACRES) MORE OR LESS

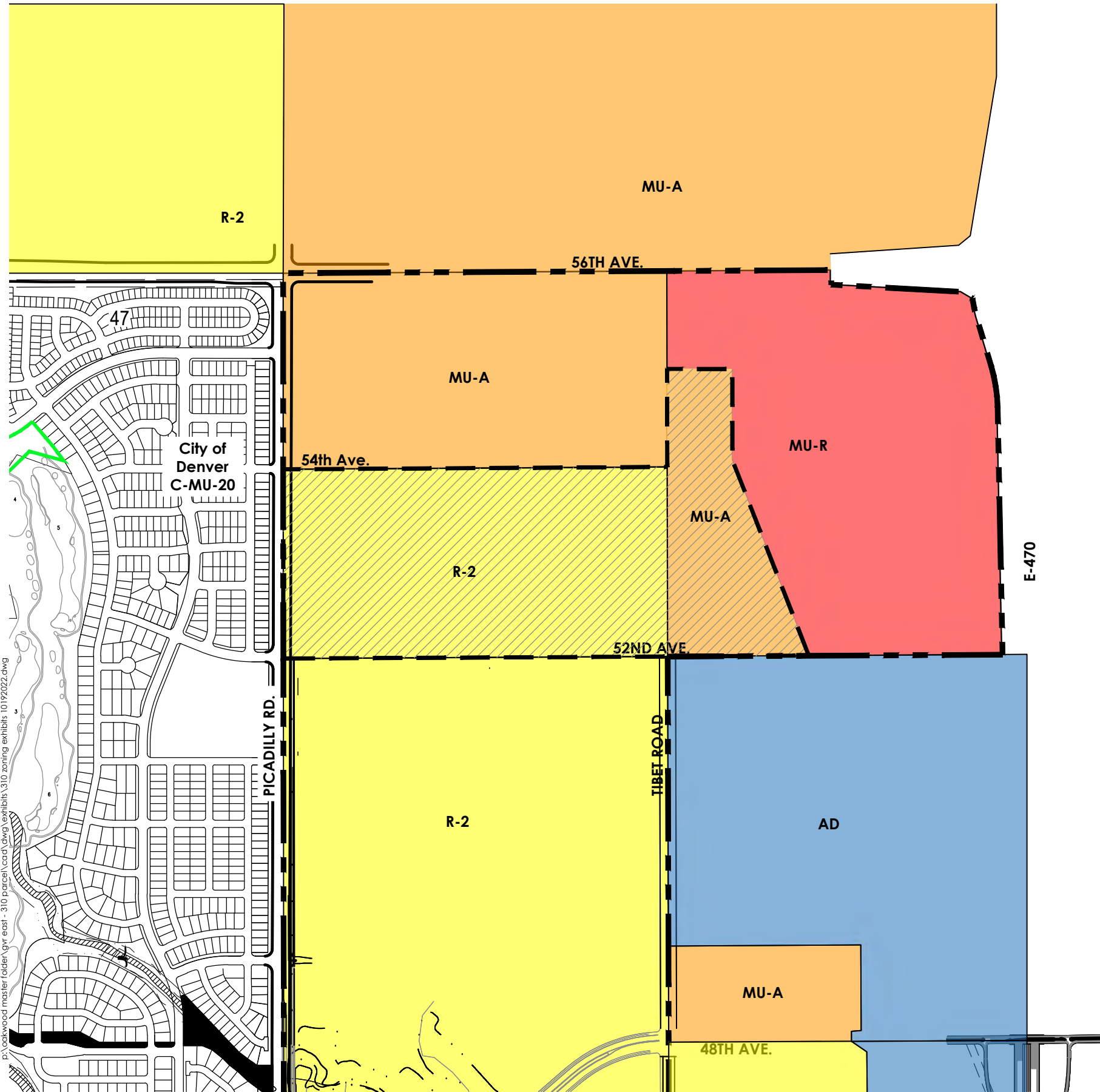
<b>CITY OF AURORA, COLORADO</b>			<b>A ZONING MAP AMENDMENT</b> BEING A PART OF THE NE 1/4 OF SEC. 13 T.3S., R.66W., SIXTH P.M. CITY OF AURORA, COUNTY OF ADAMS STATE OF COLORADO
DRAWN BY: KDS	SCALE: 1"=500'	R-O-W FILE NO.	
CHECKED BY: DED	DATE: 07/24/2023	JOB NO. 19319-28	



- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
- MU-R (MIXED-USE REGIONAL ACTIVITY CENTER)
- AD (AIRPORT DISTRICT)
- GREEN VALLEY MASTER PLAN REZONE PARCELS

**Green Valley Master Plan**  
**EXHIBIT C: EXISTING ZONING DESIGNATION**





- R-2 (MEDIUM-DENSITY RESIDENTIAL)
- MU-A (MIXED-USE AIRPORT)
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- GREEN VALLEY MASTER PLAN REZONE PARCELS

Rezone Parcels	Acres	Zone District(s)
Green Valley Amendment 2 (SE 1/4)	28.3	MU-A
Green Valley Amendment 2 (SW 1/4)	78.8	R-2
<b>Total</b>	<b>107.1</b>	

# Green Valley Master Plan

## EXHIBIT D: PROPOSED ZONING DESIGNATION



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**EXHIBIT B**

**ZONING MAP AMENDMENT**

A PORTION OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 66 WEST, SIXTH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO, **TO BE DESIGNATED AS MU-(A)**, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING AN AREA OF 28.316 ACRES, (1,233,463 SQUARE FEET), MORE OR LESS.

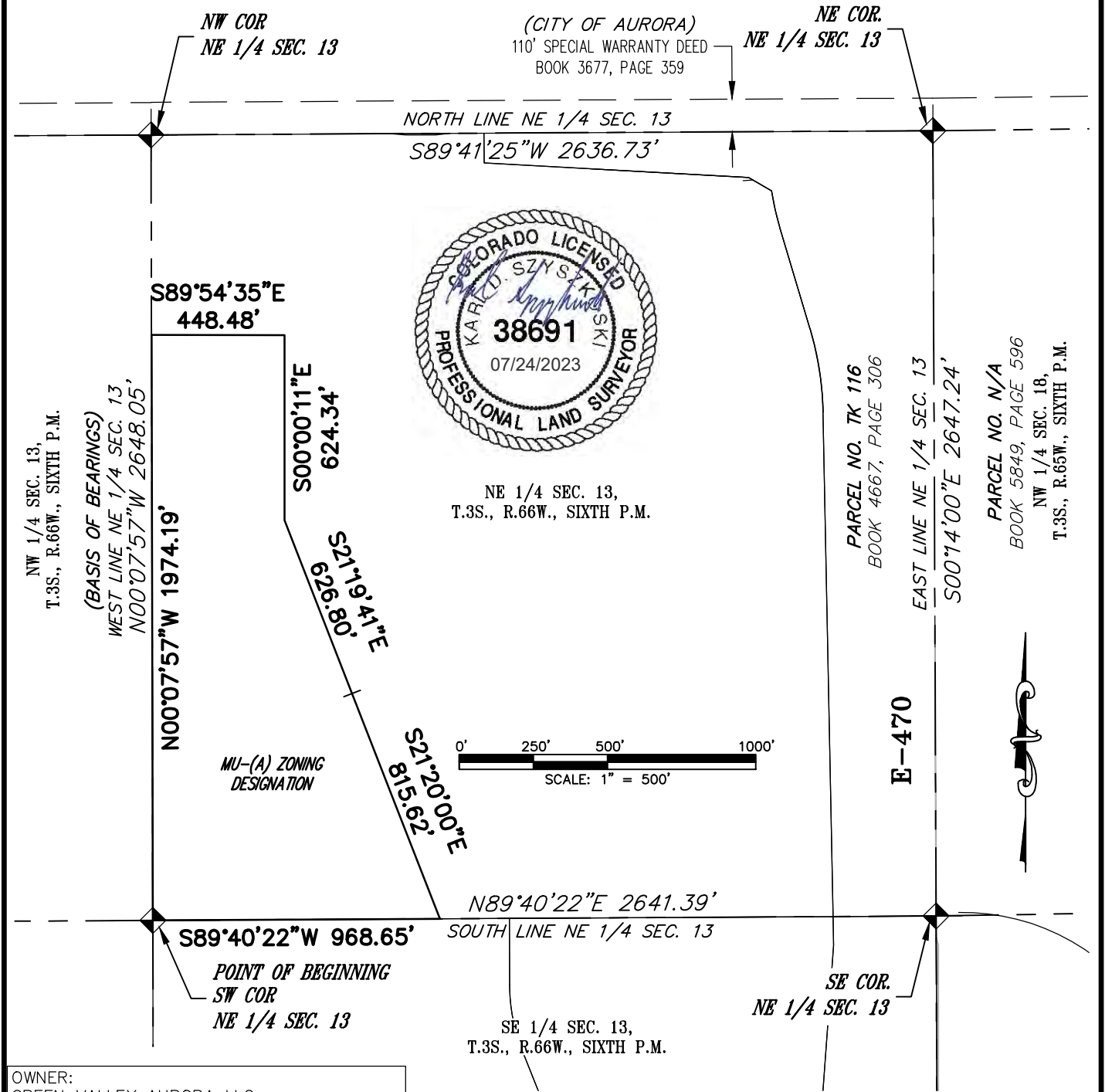
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ILLUSTRATION ATTACHED AND MADE A PART HEREOF.

KARL SZYSZKOSKI, PLS 38691  
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.  
300 EAST MINERAL AVE., SUITE 1, LITTLETON, CO 80122



**ILLUSTRATION FOR EXHIBIT B**  
SHEET 2 OF 2



OWNER:  
GREEN VALLEY AURORA LLC  
C/O AWH VENTURES INC  
1700 S PAVILION CENTER DR STE 300  
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NOTE:  
This illustration does not represent a  
monumented survey. It is intended  
only to depict the attached description.

PARCEL CONTAINS 1,233,463  
(28.316 ACRES) MORE OR LESS

<b>CITY OF AURORA, COLORADO</b>		
DRAWN BY: KDS	SCALE: 1"=500'	R-O-W FILE NO.
CHECKED BY: DED	DATE: 07/24/2023	JOB NO. 19319-28

**A ZONING MAP AMENDMENT**  
BEING A PART OF THE NE 1/4 OF SEC. 13  
T.3S., R.66W., SIXTH P.M.  
CITY OF AURORA, COUNTY OF ADAMS  
STATE OF COLORADO

## Form B: MP Narrative

### 1. General Description of the MP

*Briefly describe the general character of your proposed MP. What will be the predominant land uses? What market segment is the proposed development designed to serve?*

In 2008 a 2,500 Ac. Master Plan (MP), formerly Framework Development Plan (FDP), for Green Valley Ranch was approved. This MP included a variety of uses including residential, commercial, mixed use and a variety of parks and open space throughout. The MP was amended for 588 acres west of E-470 known as Amendment 1 and received approval in 2018. Amendment 1 modified planning areas and open space for the 588-acre area, however, there were no other changes made to the MP. The second amendment proposes to modify the 301 acres North and east of 52<sup>nd</sup> Ave. The Master Plan area is also being revised to remove all the area from the original MP approval located east of E-470.

The proposed Green Valley Ranch MP Amendment is to revise the land uses for the 301 acres north and east of 52<sup>nd</sup> Avenue, update land use maps to better align with current site plans, to remove the area east of E-470 from the MP and amend the property boundary due to E-470 purchasing a portion of the property. The proposed amendment also includes the addition of Urban Design and Landscape and Architectural Standards for Commercial/Retail uses.

We are also proposing a rezone with this Green Valley Ranch MP amendment for parcels located north of 52<sup>nd</sup> Avenue between Picadilly Road to the CIG Gas Easement east of Tibet Road. The site is bordered by MU-A (Mixed Use-Airport) to the north, R-2 (Medium Density Residential) to the south, MU-R (Mixed Use-Regional) to the east (of E-470). The Active Adult neighborhood located between 48<sup>th</sup> Ave and 52<sup>nd</sup> Ave between Picadilly Road and E Tibet Road will be expanded to the north. This community is focused on the 55+ age group, while residential uses south of 48<sup>th</sup> Ave are focused on all age groups. Adjacent to 56<sup>th</sup> Avenue and East of Picadilly Road the land uses will be commercial/retail uses to serve this community and other surrounding communities near E-470.

### 2. Defining Character of the MP

*Describe how your proposed MP will create a unique community with a definable character and special "sense of place". What facilities, amenities and special design features will set it apart in the marketplace from similar developments in your*

*area?*

Green Valley Ranch MP will be a unified community following the “Colorado” theme. This theme reflects the beauty of the Colorado foothills landscape and will have a more rustic character. Predominant architectural styles will include Classic, Contemporary, Homestead, and Victorian with materials complementing the surrounding area.

The architecture is not defined by neighborhood, but rather by a mix of product types. The residential areas throughout the development consist of a variety of housing types: single-family detached homes, motorcourts with single-family detached, front loaded single-family attached duplex homes, and may include Single-Family Attached and multifamily homes within the mixed-use planning areas. These varying styles create diverse neighborhoods in both style and affordability. The primary landscape theme consists of large sweeping native areas that use landforms and native plantings indicative of the Colorado foothills. Large planting beds located along streets and trails will be made up of masses of grasses, shrubs, and trees to provide both seasonal interest and views into and out of the site. Landforms will be accentuated with the use of berming and rock outcroppings to create spaces for both wildlife and residents to enjoy.

The commercial planning areas will include a variety of land uses, including office, institutional and retail. A component of the commercial development is a Main Street per the Mixed-Use Regional District (MU-R) Aurora standards. These main street standards are further described in Tab 10. Due to close proximity to E470 and the interchange at 56<sup>th</sup>, the commercial center is positioned to attract a variety of commercial uses which may include large scale retail, office or warehouse retail. Commercial uses may include retail shops, restaurants, pedestrian spaces, and outdoor plazas. The vision for Main Street will be to create a high-quality public space for the Green Valley Ranch community. The commercial planning areas and Main Street will reflect the community ‘Colorado’ theme through architecture, signage, urban spaces, and site furnishings.

### **3. Zoning Conformance**

*Does the MP accurately reflect adopted zone district boundaries?*

The Green Valley Ranch MP Amendment area is located within R-2, MU-A and MU-R zone districts. R-2 is located from 54<sup>th</sup> avenue to the north, 38<sup>th</sup> avenue to the south, and from Picadilly Road to the west to E470 to the east. The Mixed Use Airport (MU-A) and Mixed Use Regional District(MU-R) is



located from the 54<sup>th</sup> avenue to the south to 56<sup>th</sup> avenue to the north, and from Picadilly Road to the west to E-470 to the east. A Zone Map Amendment is concurrently being proposed with this MP Amendment to rezone 78.8 Acres of MU-A north of 52<sup>nd</sup> Ave to R-2 zone designation in order to extend the active adult community. We're also proposing to rezone 28.3 Acres of the current MU-R east of Tibet Road to MU-A. Refer to the Rezone exhibits that are provided as part of that submittal.

#### 4. Potential Regulatory Conflicts

*Are there any existing or potential conflicts between MP design ordinance requirements and the terms of any existing annexation agreements or agreements with other jurisdictions or interest groups? If so what are they and how you propose to resolve them?*

The Original Annexation Agreements include the following park and school dedication requirements:

Public Land Dedication - 6% of the area zoned for residential uses to be used for open space, and 2% of the area zoned for non-residential uses to be used for municipal purposes including fire facilities. School site dedications- up to 4% of the area zoned for residential uses. The following dedications were provided in Amendment 1:

##### Public Facilities

2% of non-residential acreage (149.7 x 2% = 3.0 Ac)

- Land dedicated to city for future fire station along 48<sup>th</sup> Ave.

##### Schools

###### P-8 School:

614 Elementary School Students (.0175 acres/child) = 10.75 ac

289 Middle School Students (.025 acres/child) = 7.23 ac

Subtotal: 17.98 ac

- Amendment 1 included an 18.0 Ac school site
- Additional School dedication requirements will be met for all residential uses once future site plans exceed the original dedications.

###### High School:

361 High School Students (.032 acres/child) = 11.565 ac

Total Acres Required = 29.55 ac

Open Space:

6% of residential acreage (564 Ac x 6% = 34 Ac)

Green Valley Ranch Master Plan:

Neighborhood Park: (3 AC. Per 1000 Residents)

Required: 31.2 acres

Provided: 31.2 acres

Community Park: (1.1 AC. Per 1000 Residents)

Required: 10.5 acres

Provided: 6.6 acre cash-in-lieu payment made as part of amendment 1.

Remaining payment to be made by first residential plat of either PA45-48.

Open Space: (7.8 AC. Per 1000 Residents)

Required: 81.0 acres

Provided: 82.7 acres

## 5. Adjustments

*Does your current design require any ordinance waivers in order to be approved? If so, list each proposed waiver, and answer the following questions for each:*

- *What are the specific site-related characteristics of your site that have led to the waiver request? (Do not include self-imposed hardships or constraints as a justification. Financial constraints may be considered, but only as they relate to unusual site conditions. Do not simply respond that meeting all development standards would be too costly.)*
- *What design alternatives have you considered to avoid the waiver? Why weren't these alternatives chosen?*
- *What measures have been taken to reduce the severity or extent of the proposed waiver?*
- *What compensating increases in design standards have you proposed to mitigate the waiver's impact?*

There are no adjustments being requested in the MP.

## 6. Required City Facilities

*What additional city facilities or services will the City of Aurora have to provide in order for your MP to be implemented? What police, fire, and recreation facilities are required and where are they located (inside or*

*outside your MP boundary.) To what extent will your development plan help to fund or construct these facilities?*

- As part of this Master Plan, the developer will be responsible for the construction of and/or funding of the roads and services prior to dedication to the City of Aurora. The City of Aurora will provide sewer and water services, police, fire, and library services. The City will also provide maintenance for public parks and public streets following dedication to the City. See Public Improvements Phasing Plan, Form J and the Development Agreement.
- A summary of the proposed water and sewer service strategy is contained in Form A. For additional detail, please refer to the Master Utility Plan and the Development Agreement.
- Picadilly Road, 56<sup>th</sup> Avenue and 48<sup>th</sup> Avenue are planned as six-lane Principal Arterials. 38<sup>th</sup> Avenue is planned as a four-lane Minor Arterial. 52<sup>nd</sup> Avenue, Tibet Road from 38<sup>th</sup> Ave to 48<sup>th</sup> Ave, and 38<sup>th</sup> Avenue are planned as three-lane collectors. 42<sup>nd</sup> Avenue is planned as a two-lane collector. Tibet Road from 48<sup>th</sup> Ave to 56<sup>th</sup> Ave is planned as a four-lane Minor Arterial. The arterials will require improvements based on City standards with development phasing. See Public Improvements Phasing Plan and the Development Agreement.

## 7. Vehicular Circulation

*Do your proposed arterial and collector roadways align with the arterials and collectors of adjacent properties? Do your roadway cross-sections match adjacent cross-sections? If not, explain why.*

- West of Picadilly, all roadways are within the City and County of Denver. The east half of Picadilly road and all roads to the east are within Aurora. Principal and Minor Arterials align to connect with the arterials to the north, south, east, and west. To the east, 48<sup>th</sup> Ave is aligned to connect with 48<sup>th</sup> Ave. in the approved Windler MP. Collectors in Aurora are spaced at half-mile intervals, but to the west in Denver, collectors are not spaced at the same interval. Due to the differences, the road alignments have been aligned to match existing roads within Denver.

See Street Cross Sections on Tab 10.14-10.15.

## 8. Pedestrian Circulation

*Do off-street trails on your site connect with those on adjacent properties? Do your cross sections match adjacent cross sections? If not, explain why.*

- Off-street trails within Green Valley Ranch MP are aligned to connect with trails to the west in Green Valley Ranch Denver, including the one along the First Creek Drainage and along Tributary T near 48<sup>th</sup> Avenue. A community trail from the PA-16 open space will cross 52<sup>nd</sup> Ave via a grade separated crossing and extend north into PA-62 and the proposed active adult community. This will link the parks and amenities being provided to this community.
- Trail sections in Green Valley Ranch MP will be constructed to the City of Aurora standards and shall be constructed of concrete in the more urban areas of the community, and in the more natural areas, other materials, such as decomposed granite, may be proposed at the time of Site Plan review. Trails along drainage channels will be constructed according to maintenance road / trail standards of the Urban Drainage and Flood Control District and the P&OSD standards and will be a minimum of 10 feet wide. These trails shall both act as pedestrian trails and maintenance trails. Regional trails outside of the drainage ways will be ten (10) feet wide and community trails shall have a minimum width of eight (8) feet. Refer to the Open Space Plan for regional and community trail locations. Six (6) foot wide minimum neighborhood trails will also be incorporated into the trail network. These trail locations will be determined at Site Plan.
- The proposed Main Street in the commercial area will have a strong pedestrian connection across Tibet Road into the active adult community.

## **9. Protection of Natural Features, Resources and Sensitive Areas.**

*Describe how the development will be designed to protect, use or enhance natural resources and features. In particular, describe how the design of the development will respond to:*

- *Water features, such as floodplains, streams, and arroyos.*
  - Open space is planned along the drainage corridors. This open space becomes part of the open space/trail network that crosses the site linking neighborhoods to parks, a school, and activity centers.

- *Adjacent parks and public open space*
  - There are four (4) neighborhood parks within close proximity to the Open Space Corridor. This corridor begins south off-site from 38<sup>th</sup> Avenue and E-470 extending diagonally, towards 48<sup>th</sup> Avenue and Picadilly Road, within Green Valley Ranch. Two other neighborhood parks are along open space corridors in the active adult community and connect up to this main Tributary T open space.
  
- *Historic or archeological sites*
  - A review of the records of The Colorado Historical Society Office of Archaeology and Historic Preservation "Inventory of Cultural Resources" identified a number of items inventoried on the site, but none were found have significant historic or archaeological value.
  - The majority of these sites occur within the site's drainage areas, which will be enhanced as open space/trail corridors.
  
- *Significant views of the Front Range and views from public parks and I-70 and E- 470 and other collector and arterial streets*
  - Views from public parks and other collector streets west will be protected at strategic points within the development. The use of topography and vegetation will frame scenic vistas.
  
- *Riparian wildlife habitat*
  - There are no true riparian zones along the drainage. There is no flowing water or springs along the drainage, and no channels have developed.
  - Tributary T just east of Picadilly Road in Section 24 has one old mature cottonwood along the drainage corridors. This is also not a true riparian zone since there is no flowing water except after a storm, and there is no definite channel. The understory is an overgrazed pasture with no brushes or willow.
  
- *The approximate topographic form of major ridgelines and swales*
  - There are no major ridgelines or swales. The drainages will be enhanced as a part of the planned community's open space/trail network.
  
- *Natural or geologic hazard areas, including unstable slopes and expansive soils*

- No geologic hazard areas or expansive soils have been identified on the site.
- *Other natural features such as bluffs, ridges, steep slopes, stands of mature trees, rock outcroppings, or wetlands.*
  - Slopes over 6% are primarily found in the drainage areas that will be preserved/ enhanced as open space. There are no bluffs, ridges, or rock outcroppings. There are a few mature trees in and around the drainage areas that will be preserved to the extent possible within the open space areas.

## 10. Neighborhood Concept

*Briefly describe the location of your individual neighborhoods. How have you defined the boundaries for each neighborhood? How are the architectural styles and other design features distributed among the neighborhoods? Are there any styles or other design standards that are restricted to specific areas?*

The Green Valley Ranch Master Plan will be unified community. The architecture is defined by a mix of product types, which vary by location and quantity throughout the entire development which is split into Active Adult north of 48<sup>th</sup> Ave and a more Traditional neighborhood south of 48<sup>th</sup> Ave. When mixed together, these varying types create diverse neighborhoods in both style and affordability.

## 11. Black Forest Ordinance

*Is the Black Forest Ordinance applicable to your site? If so where do the impacted areas show on your exhibits, and how will the requirements of the ordinance be carried out?*

- The Green Valley Ranch site is outside of the Black Forest Ordinance jurisdictional area.

## 12. Steep Slope Standards

*Does your development plan include building on areas with an existing slope of 6% or greater? If so, what standards and design strategies have you adopted to deal with drainage and aesthetic issues? Have you reviewed and considered our recommended steep slope design guidelines? If not, why?*

- Slopes over 6% are primarily located in the drainage areas that are enhanced as open space.

### 13. Consultations with Outside Jurisdictions and Agencies

*Have you consulted with representatives of your local school district, the Colorado Division of Wildlife, the Colorado Department of Public Health and Environment, or other applicable local, state or federal agencies? If so, list the dates, contact person, and results of your discussions. Include any letters you've received from these agencies as an appendix to your application.*

- A number of meetings have been held between representatives of the applicant and the Aurora Public Schools to reach agreement on servicing the Green Valley Ranch Master Plan.

**TAB 8.3**

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
1. Floodway Channel	PA-28	CHANNEL	3.4				Storm flow conveyance. Not Credited towards public land dedication requirement.
	PA-29	CHANNEL	2.0				Storm flow conveyance. Not Credited towards public land dedication requirement.
	PA-30	CHANNEL	2.3				Storm flow conveyance. Not Credited towards public land dedication requirement.
Subtotal			7.7				
2. Required Land Dedication Areas for Park, Schools, & Fire Stations	PA-10	CLUBHOUSE	3.5				Amenity Area and Pool
	PA-11	CLUBHOUSE	1.8				Amenity Area and Pool
	PA-12	SCHOOL-P-8	18.0				Public School P-8
	PA-13	NEIGHBORHOOD PARK	6.2	3.0 ACRES PER 1,000 RESIDENTS			6.2 AC net Credited toward neighborhood park requirement.
	PA-14	NEIGHBORHOOD PARK	5.7	3.0 ACRES PER 1,000 RESIDENTS			5.7 AC net Credited toward neighborhood park requirement.
	PA-15	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-16	OS-D	18.1	7.8 ACRES PER 1,000 RESIDENTS			18.1 AC net Credited toward open space requirement.
	PA-17	OS-D(Corridor)	2.8	7.8 ACRES PER 1,000 RESIDENTS			2.8 AC net Credited toward open space requirement.
	PA-18	OS-D(Corridor)	1.7	7.8 ACRES PER 1,000 RESIDENTS			1.7 AC net Credited toward open space requirement.
	PA-19	OS-D (Corridor)	3.8	7.8 ACRES PER 1,000 RESIDENTS			3.8 AC net Credited toward open space requirement.
	PA-20	OS-D(Corridor)	10.6	7.8 ACRES PER 1,000 RESIDENTS			10.6 AC net Credited toward open space requirement.
	PA-21	OS-D(Corridor)	1.6	7.8 ACRES PER 1,000 RESIDENTS			1.6 AC net Credited toward open space requirement.
	PA-22	OS-D(Corridor)	3.9	7.8 ACRES PER 1,000 RESIDENTS			3.9 AC net Credited toward open space requirement.
	PA-23	OS-D(Corridor)	9.8	7.8 ACRES PER 1,000 RESIDENTS			9.8 AC net Credited toward open space requirement.
	PA-24	OS-D(Corridor)	6.5	7.8 ACRES PER 1,000 RESIDENTS			6.5 AC net Credited toward open space requirement.
	PA-25	DETENTION	5.4				0 AC net Credited toward open space requirement.
	PA-26	DETENTION	6.8				0 AC net Credited toward open space requirement.
	PA-27	DETENTION	2.1				0 AC net Credited toward open space requirement.
	PA-31	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-32	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.

Sheet Title:

**LAND USE MATRIX**

Land Use Map, Matrix and Standard Notes  
Master Plan

Project Title:

**Green Valley Ranch Master Plan Amendment 2**  
Aurora, Colorado

**GREEN VALLEY RANCH**



TAB 8.3

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
2. Required Land Dedication Areas for Park, Schools, & Fire Stations	PA-33	OS-D	0.8	7.8 ACRES PER 1,000 RESIDENTS			0.8 AC net Credited toward open space requirement.
	PA-34	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-35	OS-D	0.4	7.8 ACRES PER 1,000 RESIDENTS			0.4 AC net Credited toward open space requirement.
	PA-36	OS-D	1.1	7.8 ACRES PER 1,000 RESIDENTS			1.1 AC net Credited toward open space requirement.
	PA-37	OS-D	1.0	7.8 ACRES PER 1,000 RESIDENTS			1.0 AC net Credited toward open space requirement.
	PA-38	OS-POCKET PARK	0.9	7.8 ACRES PER 1,000 RESIDENTS			0.9 AC net Credited toward open space requirement.
	PA-39	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-40	OS-POCKET PARK	2.0	7.8 ACRES PER 1,000 RESIDENTS			2.0 AC net Credited toward open space requirement.
	PA-41	OS-POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-42	EASEMENT (UTILITY)	0.5				0 AC net Credited toward open space requirement.
	PA-43	EASEMENT (UTILITY)	0.5				0 AC net Credited toward open space requirement.
	PA-44	EASEMENT (MULTI-USE)	1.7				0 AC net Credited toward open space requirement.
	PA-56	OS- POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-57	OS- POCKET PARK	0.5	7.8 ACRES PER 1,000 RESIDENTS			0.5 AC net Credited toward open space requirement.
	PA-58	OS-D(Corridor)	1.7	7.8 ACRES PER 1,000 RESIDENTS			1.7 AC net Credited toward open space requirement.
	PA-59	OS-D(Corridor)	1.2	7.8 ACRES PER 1,000 RESIDENTS			1.2 AC net Credited toward neighborhood park requirement.
	PA-60	NEIGHBORHOOD PARK	5.0	7.8 ACRES PER 1,000 RESIDENTS			5.0 AC net Credited toward open space requirement.
	PA-61	OS-D(Corridor)	11.8	7.8 ACRES PER 1,000 RESIDENTS			11.8 AC net Credited toward open space requirement.
	PA-62	NEIGHBORHOOD PARK	3.0	3.0 ACRES PER 1,000 RESIDENTS			3.0 AC net Credited toward neighborhood park requirement.
	PA-63	NEIGHBORHOOD PARK	5.3	3.0 ACRES PER 1,000 RESIDENTS			5.3 AC net Credited toward neighborhood park requirement.
PA-64	EASEMENT (MULTI-USE)	6.1				0 AC net Credited toward open space requirement.	
Subtotal			160.2				

Sheet Title:

**LAND USE MATRIX**

Land Use Map, Matrix and Standard Notes  
Master Plan

Project Title:

**Green Valley Ranch Master Plan Amendment 2**  
Aurora, Colorado

**GREEN VALLEY RANCH**

TAB 8.3

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
3a. Development Areas Subzone: R-2 Subarea-C	PA-1	AA, SFD STAND, SFD SMALL	30.2	5.2 DU/AC	241	157	Max. Potential Density is 8 DU/AC
	PA-2	AA, SFD STAND, SFD SMALL, SFA DUPLEX	42.2	5.6 DU/AC	338	236	Max. Potential Density is 8 DU/AC
	PA-3	AA, SFD STAND, SFD SMALL	30.0	5.0 DU/AC	240	150	Max. Potential Density is 8 DU/AC
	PA-4	AA, SFD STAND, SFD SMALL	26.3	4.0 DU/AC	210	105	Max. Potential Density is 8 DU/AC
	PA-5	SFD STAND, SFD SMALL	26.4	4.1 DU/AC	211	108	Max. Potential Density is 8 DU/AC
	PA-6	SFD STAND, SFD SMALL	78.9	5.3 DU/AC	631	418	Max. Potential Density is 8 DU/AC
	PA-7	SFD STAND, SFD SMALL	91.9	5.9 DU/AC	735	542	Max. Potential Density is 8 DU/AC
	PA-8	SFD STAND, SFD SMALL	30.1	6.2 DU/AC	241	186	Max. Potential Density is 8 DU/AC
	PA-9	SFD STAND, SFD SMALL	62.9	6.5 DU/AC	503	408	Max. Potential Density is 8 DU/AC
	PA-45	AA, SFD STAND, SFD SMALL, SFA DUPLEX	26.3	5.0 DU/AC	210	131	Max. Potential Density by code is 5 DU/AC
	PA-46	AA, SFD STAND, SFD SMALL, SFA DUPLEX	39.0	5.0 DU/AC	312	195	Max. Potential Density by code is 5 DU/AC
		RIGHT-OF-WAY	41.8				
Subtotal			526.0				
3b. Development Areas Subzone: MU-A & MU-R	PA-47	AA, SFA, SFD SMALL, SFD STAND, MULTI-FAMILY	15.6	7.0 DU/AC	125	109	Max. Potential Density by Code is 40 DU/AC
	PA-48		22.5	7.0 DU/AC	180	157	Max. Potential Density by Code is 40 DU/AC
	PA-49		19.7	10.0 DU/AC	394	197	Max. Potential Density by Code is 40 DU/AC
	PA-50	SFA, MULTI-FAMILY	57.0	10.0 DU/AC	1026	570	Max. Potential Density by Code is 40 DU/AC
	PA-51		15.3	10.0 DU/AC	275	153	Max. Potential Density by Code is 40 DU/AC
	PA-52		9.6	10.0 DU/AC	173	96	Max. Potential Density by Code is 40 DU/AC
	PA-53	SFA, SFD SMALL, SFD STAND, MULTI-FAMILY	19.6	10.0 DU/AC	353	196	Max. Potential Density by Code is 40 DU/AC
	PA-54		13.7	10.0 DU/AC	247	137	Max. Potential Density by Code is 40 DU/AC
	PA-55		17.2	15.0 DU/AC	310	258	Max. Potential Density by Code is 40 DU/AC
Subtotal			190.2				
<b>SUB AREA TOTAL</b>			<b>884.1</b>		<b>6955</b>	<b>4509</b>	

Sheet Title:

## LAND USE MATRIX

Land Use Map, Matrix and Standard Notes  
Master Plan

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Project Title:

### Green Valley Ranch Master Plan Amendment 2

Aurora, Colorado

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**GREEN VALLEY RANCH**

TAB 8.3

FORM D: MP Land Use Matrix							
A. LAND USE ITEM	B. PLANNING AREA MAP NUMBER	C. MAP AREA CODE	D. GROSS LAND AREA IN ACRES	E. LAND USE FORMULA	F. MAX POTENTIAL DENSITY BY CODE (in DU's)	G. ACTUAL PROPOSED MAXIMUM DENSITY (in DU's)	H. LAND USE DETAILS AND COMMENTS
4. Total Map Acreage (Sub-Area Total Above)			884.1				
5. Less 1/2 of Perimeter Streets Not Owned by Applicant			16.3				
6. Applicant's Acreage Listed in Application (Line 4 minus Line 5)			867.8				
7. Total Floodplain Acreage			7.7				
8. Total Adjusted Gross MP Acreage (Line 4 minus Line 7)			876.4				
9. Total Active Adult Planning Areas			232.1	1.58 PERSONS PER UNIT	1856	1240	1960 Estimated Residents
10. Total Single Family Planning Areas			290.2	2.65 PERSONS PER UNIT	2322	1662	4405 Estimated Residents
12. Total Mixed Use Planning Areas			152.1	2.5 PERSONS PER UNIT	2777	1607	4018 Estimated Residents
<b>12. Total Residential</b>			<b>674.4</b>		<b>6955</b>	<b>4509</b>	<b>10383 Estimated Residents</b>
13. Check for avg. residential density in subzone				5 DU's/AC TIMES LINE 8	4382	4509	
14. Small Lot Total				50% of TOTAL UNITS	3478	2255	
15. Check for maximum allowable number of multi-family units							
16. Total Retail Planning Areas			0.0				
17. Total Office Planning Areas			0.0				
18. Total Industrial Planning Areas			0.0				
19. Total Mixed Commercial Planning Areas			190.2				
<b>20. Total Commercial</b>			<b>190.2</b>				
21. Total Neighborhood Parks			31.2	3.0 AC / 1000 RESIDENTS			Required Land Dedication = 31.2 AC. Provided Land Dedication = 31.2 AC.
22. Total Community Parks			0.0	1.1 AC / 1000 RESIDENTS			Requirement of 11.4 AC will be met by applicant cash-in-lieu payment (6.6 AC. Cash-in-lieu payment made as part of Amendment 1) Remaining payment to be made by first residential plat of either PA45-54
23. Total other Credited Open Space including trail corridors, greenbelts, and special rec. sites			82.7	7.8 AC / 1000 RESIDENTS			Required Land Dedication = 81.0 AC. Provided Land Dedication = 82.7 AC.
<b>24. Total Open Space</b>			<b>113.9</b>				<b>Required Land Dedication = 123.6 AC. Provided Land Dedication = 113.9 AC. Provided Cash-In-Lieu Payment = 11.4 AC.</b>

Sheet Title:

**LAND USE MATRIX**

**Land Use Map, Matrix and Standard Notes**

Master Plan

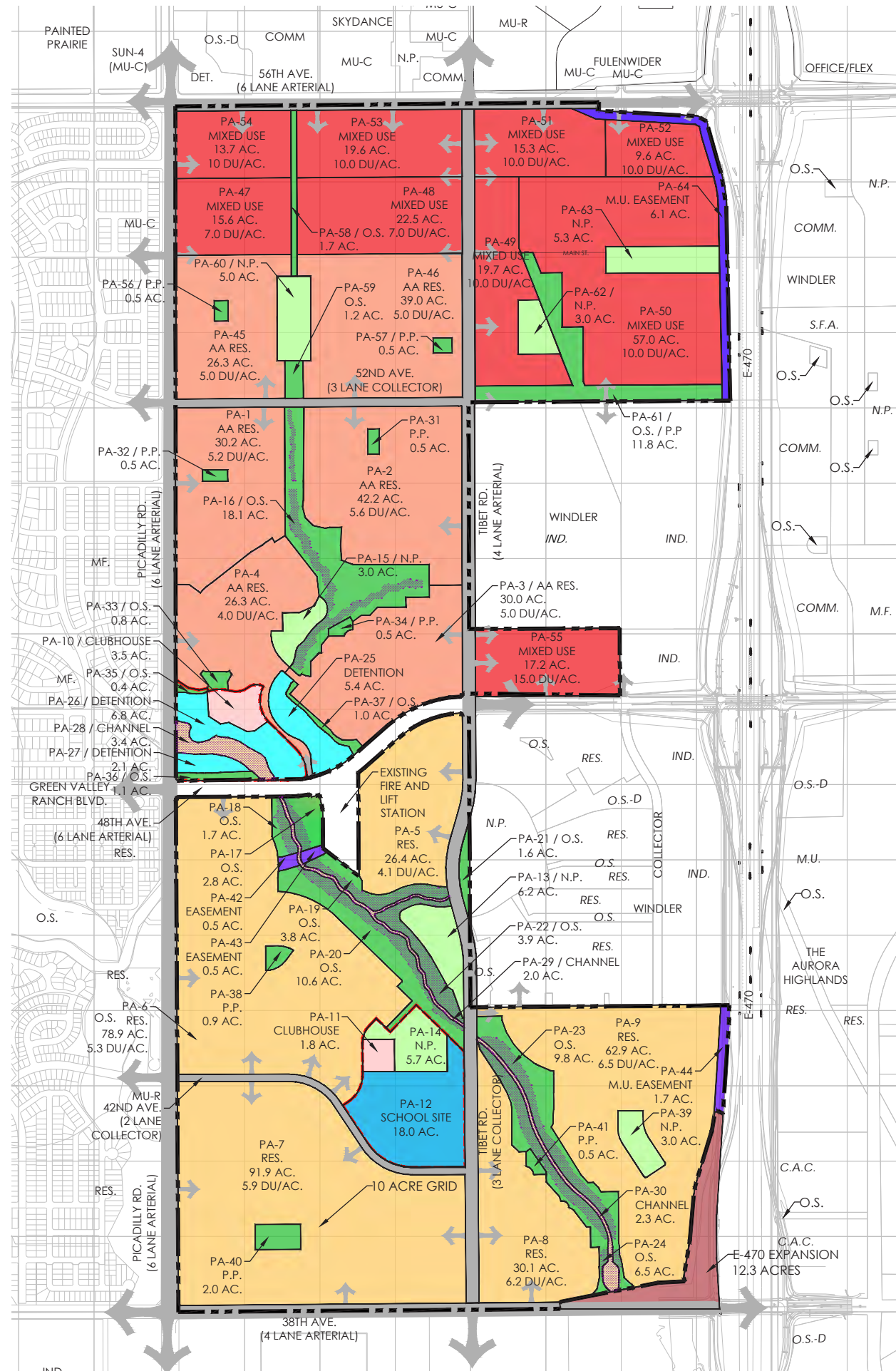
Project Title:

**Green Valley Ranch Master Plan Amendment 2**

Aurora, Colorado

**GREEN VALLEY RANCH**

TAB 8.4



LEGEND

- SINGLE FAMILY RES.
  - ACTIVE ADULT RES.
  - OPEN SPACE
  - DETENTION POND
  - FLOODWAY CHANNEL
  - CLUBHOUSE
  - NEIGHBORHOOD PARK
  - 100 YEAR FLOOD PLAIN
  - SCHOOL SITE
  - ROAD RIGHT OF WAY
  - EASEMENT
  - COMMERCIAL
  - MIXED USE
  - NAC BOUNDARY
- IND = INDUSTRIAL  
 COMM. = COMMERCIAL  
 C.A.C. = COMMUNITY ACTIVITY CENTER  
 MU-C = MULTI USE COMMERCIAL
- O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED



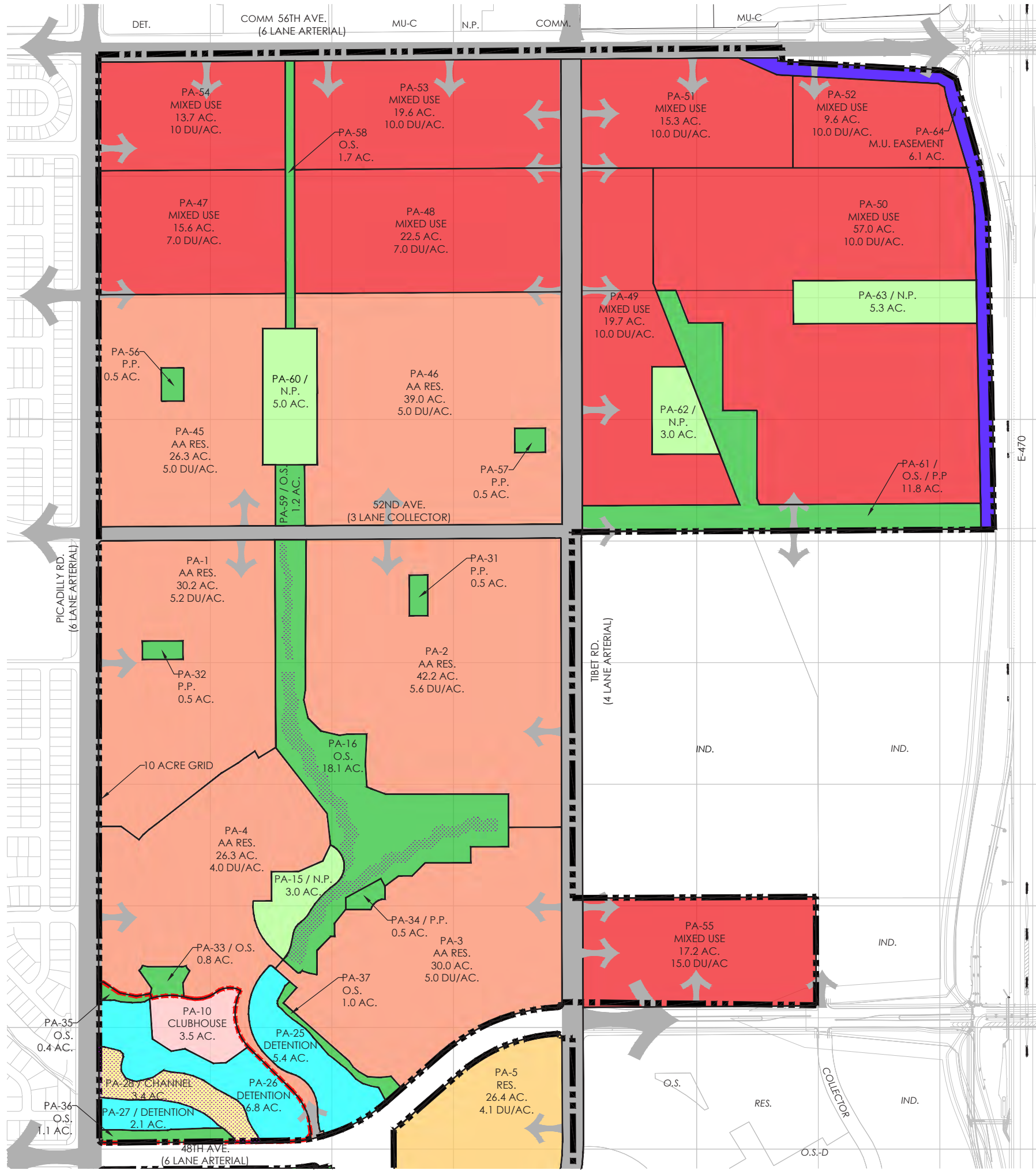
Sheet Title:  
**LAND USE PLAN  
 OVERALL**  
 Land Use Map, Matrix and  
 Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master  
 Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY  
 RANCH**

July 24, 2023

Tab 8.4

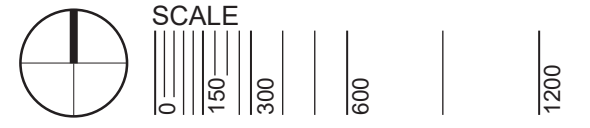
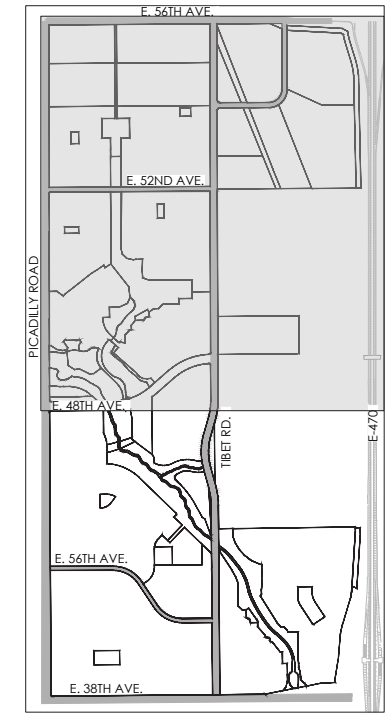


LEGEND

- SINGLE FAMILY RES.
- SCHOOL SITE
- ACTIVE ADULT RES.
- ROAD RIGHT OF WAY
- OPEN SPACE
- EASEMENT
- DETENTION POND
- COMMERCIAL
- FLOODWAY CHANNEL
- MIXED USE
- CLUBHOUSE
- NAC BOUNDARY
- NEIGHBORHOOD PARK
- IND = INDUSTRIAL
- COMM. = COMMERCIAL
- C.A.C. = COMMUNITY ACTIVITY CENTER
- MU-C = MULTI USE COMMERCIAL

O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED

KEY MAP



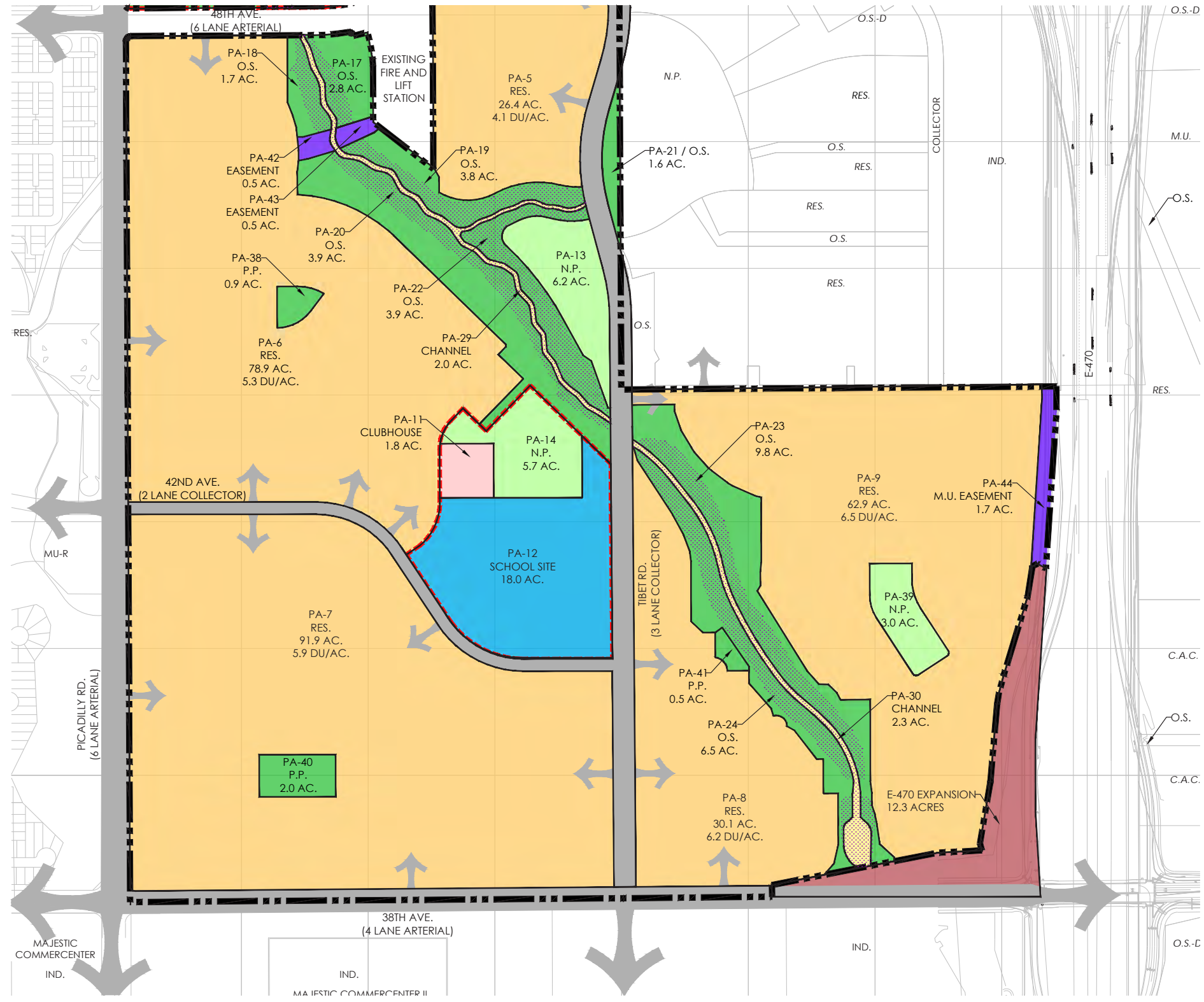
Sheet Title:  
**LAND USE PLAN SHEET 1**  
 Land Use Map, Matrix and Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY RANCH**

July 24, 2023 Tab 8.4

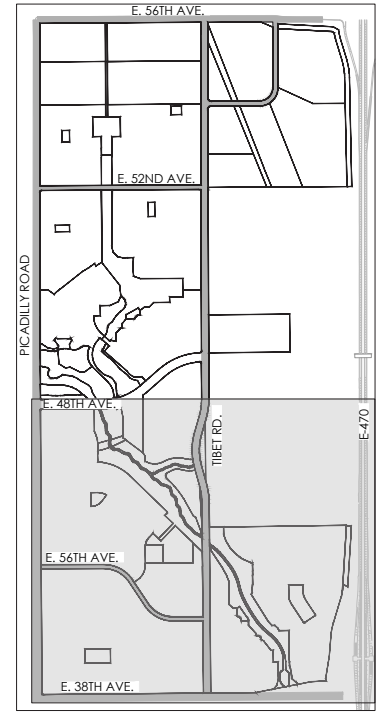
TAB 8.4



LEGEND

- SINGLE FAMILY RES.
  - ACTIVE ADULT RES.
  - OPEN SPACE
  - DETENTION POND
  - FLOODWAY CHANNEL
  - CLUBHOUSE
  - NEIGHBORHOOD PARK
  - 100 YEAR FLOOD PLAIN
  - SCHOOL SITE
  - ROAD RIGHT OF WAY
  - EASEMENT
  - COMMERCIAL
  - MIXED USE
  - NAC BOUNDARY
- IND = INDUSTRIAL  
 COMM. = COMMERCIAL  
 C.A.C. = COMMUNITY ACTIVITY CENTER  
 MU-C = MULTI USE COMMERCIAL
- O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL  
 M.F. = MULTI FAMILY  
 S.F.A. = SINGLE FAMILY ATTACHED  
 S.F.D. = SINGLE FAMILY DETACHED

KEY MAP

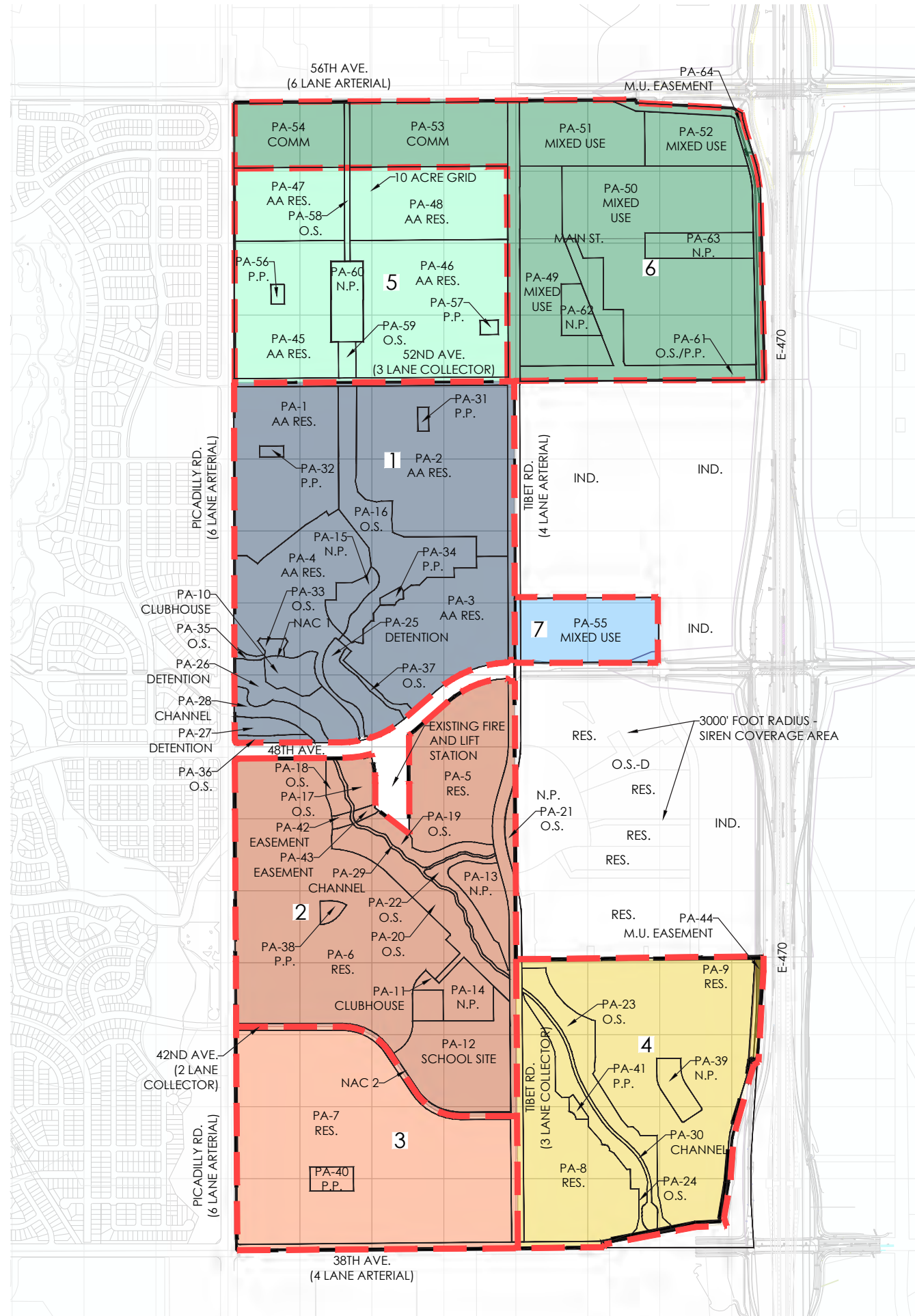


Sheet Title:  
**LAND USE PLAN  
 SHEET 2**  
 Land Use Map, Matrix and  
 Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master  
 Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY  
 RANCH**

TAB 8.5



LEGEND

- NEIGHBORHOOD BOUNDARY
- O.S. = OPEN SPACE
- N.P. = NEIGHBORHOOD PARK
- P.P. = POCKET PARK
- RES. = RESIDENTIAL
- IND. = INDUSTRIAL

Neighborhood	Size (AC)	North Boundary	South Boundary	East Boundary	West Boundary
1	180.7	52nd Ave	48th Ave	Tibet Road	Picadilly Road
2	174.7	48th Ave	42nd Ave	Tibet Road	Picadilly Road
3	101.8	42nd Ave	38th Ave	Tibet Road	Picadilly Road
4	115.1	44th Ave	38th Ave	E-470	Tibet Road
5	114.5	Neighborhood 6	52nd Ave	Tibet Road	Picadilly Road
6	171.3	56th Ave	Windler	E-470	Tibet/Picadilly Road
7	18.1	Windler	48th Ave	Windler	Tibet Road
Total	876.2				

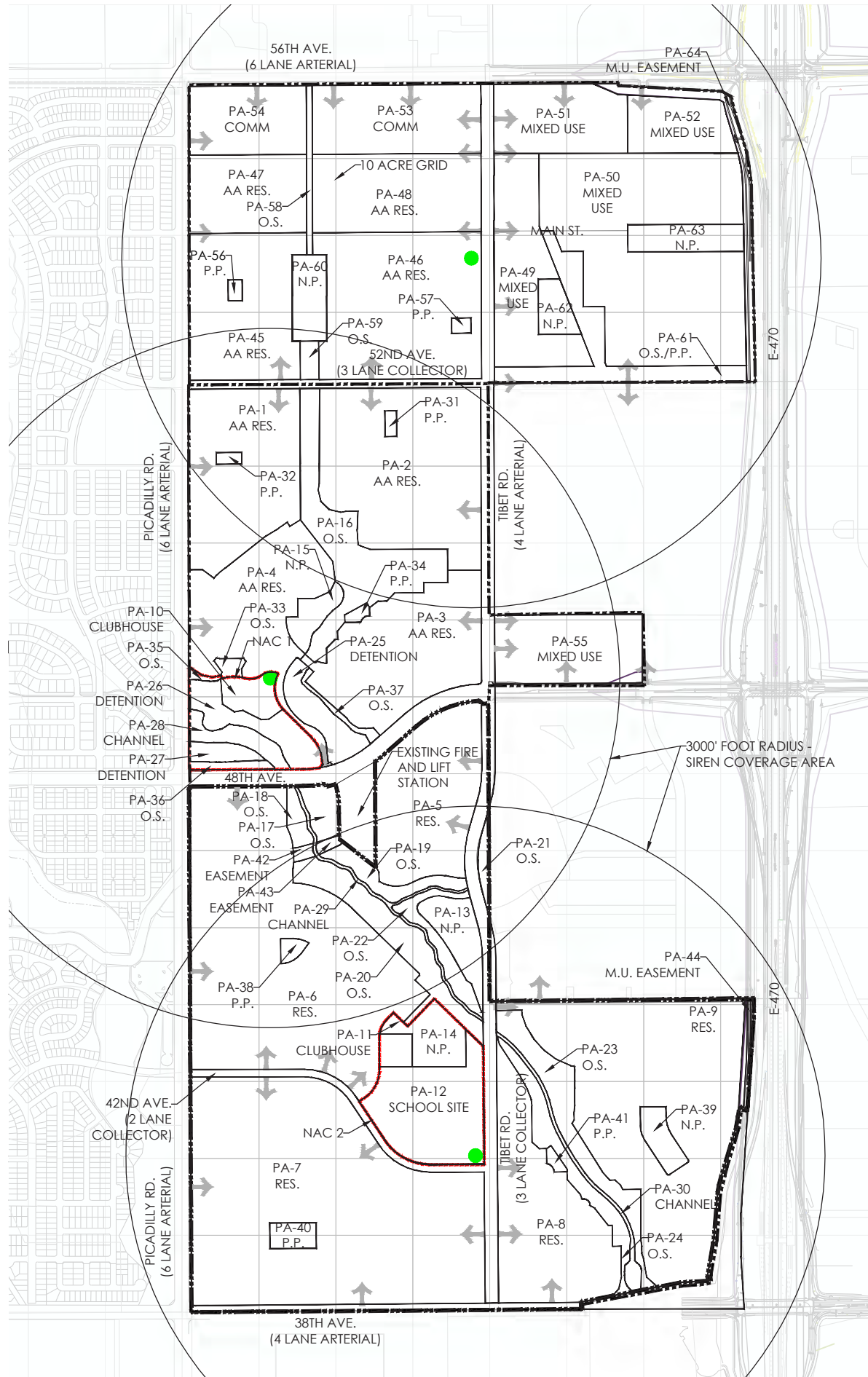


Sheet Title:  
**NEIGHBORHOOD  
 DEFINITION PLAN**  
 Land Use Map, Matrix and  
 Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master  
 Plan Amendment 2**  
 Aurora, Colorado



TAB 8.6



LEGEND

- ➔ PROPOSED ENTRY POINT
- WHELEN ALERT SIREN TOWER LOCATION
- DEDICATED FIRE STATION
- - - PROPERTY LINE
- ▭ NEIGHBORHOOD ACTIVITY CENTER

O.S. = OPEN SPACE  
 N.P. = NEIGHBORHOOD PARK  
 P.P. = POCKET PARK  
 RES. = RESIDENTIAL

STANDARD FIRE NOTES

1. In the event that a permanent fire station is not operational, the Aurora Fire Department may require that a temporary fire station be provided by the developer and/or annexing party. The property has been dedicated to the City and is no less than 1 ¼ acres with the location and dimensions such that optimal emergency response times can be achieved.
2. The City of Aurora requires that a permanent station be platted at the time of development approval. The property has been dedicated to the City and is no less than 1 ¼ acres with the location and dimensions such that optimal emergency response times can be achieved. Shared use sites (police, fire, etc) must be at least 8 acres in size and situated such that optimal emergency response times can be achieved. These sites shall be contiguous to collector streets.
3. Permanent or temporary fire stations: the exact placement of permanent or temporary fire stations will be determined and approved by the city of aurora's fire marshal to insure that coordinated coverage is provided within the city. For specific questions, the fire marshal can be reached through the fire department main switchboard, 303-326-8999, or 303-326-8986 (fax).
4. The FEMA requirement for outdoor emergency warning systems is a 60-70 foot monopole tower using an alert siren. The City of Aurora uses the Whelen Siren System. The land requirement for the tower is a 10' x 10' easement. Each siren covers approximately 3,000 radial feet at 70 db and is typically spaced one siren per square mile.
5. In newly annexed/developing areas of the city, sirens should be sited on every ½ section of ground (320 acres) or 6000 feet apart to provide edge to edge coverage.
6. The exact placement of sirens will be determined by the City of Aurora's Office of Emergency Management to insure that coordinated coverage is provided on a system wide basis. For specific questions, the Office of Emergency Management can be reached as 303-739-7636 (phone), 303-326-8986 (fax), or afd\_oem@auroragov.org



Sheet Title:  
**FIRE AND SAFETY EXHIBIT**  
 Land Use Map, Matrix and Standard Notes  
 Master Plan

Project Title:  
**Green Valley Ranch Master Plan Amendment 2**  
 Aurora, Colorado

**GREEN VALLEY RANCH**

July 24, 2023

Tab 8.6



ORDINANCE NO. 2023- \_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR A ZONING MAP AMENDMENT TO REZONE 28.3 ACRES OF LAND TO MIXED USE-AIRPORT, LOCATED EAST OF TIBET ROAD

WHEREAS, the applicant has requested that 28.3 acres of land, more or less, located east of Tibet Road, County of Adams, State of Colorado (the “Property”), be rezoned from Mixed Use-Regional (MU-R) to Mixed-Use Airport (MU-A); and

WHEREAS, Section 146-5.4.1.C.3 of the Uniform Development Ordinance provides that all applications for the rezoning of property within the City of Aurora, Colorado (the “City”), shall be presented for a public hearing, both to the Planning and Zoning Commission, who shall render a recommendation to City Council, and to City Council for final decision; and

WHEREAS, on October 25, 2023, following a public hearing, the Planning and Zoning Commission voted to recommend the rezoning of the Property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. Based on the evidence presented at tonight’s public hearing, City Council finds and determines that: the rezoning is consistent with the spirit and intent of the Comprehensive Plan, is compatible with surrounding development, and would not result in a significant dislocation of tenants or occupants of the property.

Section 2. The Property, as more particularly described in “Exhibit A” attached hereto and incorporated herein, is zoned Mixed Use-Airport (MU-A) and the zoning map is hereby amended in accordance with said zoning.

Section 3. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 4. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

PASSED AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*Lena McClelland*<sup>RLA</sup>  
\_\_\_\_\_  
LENA MCCLELLAND, Assistant City Attorney



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Sable Boulevard Townhomes Zoning Map Amendment
<b>Item Initiator:</b> Aja Tibbs, Planning Supervisor, Planning and Development Services
<b>Staff Source/Legal Source:</b> Aja Tibbs, Planning Supervisor, Planning and Development Services / Lena McClelland, Assistant City Attorney
<b>Outside Speaker:</b> Kory Whitaker, Habitat for Humanity of Metro Denver
<b>Council Goal:</b> 2012: 5.6--Continue to plan for high quality neighborhoods with a balanced housing stock

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name, title, department / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

A PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REZONING A PARCEL OF LAND MEASURING 5.0244 ACRES MORE OR LESS AT THE NORTHEAST CORNER OF SABLE BOULEVARD AND EAST MONTVIEW BOULEVARD FROM RURAL-RESIDENTIAL DISTRICT (R-R) TO MEDIUM DENSITY RESIDENTIAL DISTRICT (R-2) AND AMENDING THE ZONING MAP ACCORDINGLY (SABLE BOULEVARD TOWNHOMES ZONING MAP AMENDMENT)  
Aja, Tibbs, Planning Supervisor, Plannind and Development Services / Lena McClelland, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

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**Policy Committee Name:** Planning and Zoning Commission

**Policy Committee Date:** 11/21/2023

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval  Does Not Recommend Approval
- Forwarded Without Recommendation  Minutes Not Available
- Minutes Attached

---

**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

The Planning and Zoning Commission heard the applicant’s request for a Zoning Map Amendment to change the zoning from Rural Residential District (R-R) to Medium Density Residential District (R-2) in a public hearing on November 21, 2023 and voted unanimously (7-0) to recommend approval to City Council. The applicant has included an associated site plan for 70 townhomes with the application for a zoning map amendment, which was also heard and approved unanimously (7-0) at the same Planning and Zoning Commission. The Summary of Planning Commission Actions is attached and details the testimony, discussion, and Planning Commission actions on these items.

---

**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

The applicant, Utah Development Group, is requesting a recommendation of approval of a Zoning Map Amendment (Rezone) for 5.0244-acres from R-R Rural Residential District to R-2 Medium Density District. The property is located at the northeast corner of Sable Boulevard and E. Montview Boulevard within Subarea A. There is an existing single-family detached home, several outbuildings and an unimproved storage area on the property, which is to be demolished as part of the applicants development plans. The site is bound by single-family residential development to the north and east, multifamily development to the west, and manufactured housing to the south.

The proposed Zoning Map Amendment is requested to address housing trend changes in the surrounding area and City-wide. These trend changes include the increasing need for a variety of housing options at varying price points and the current housing availability not meeting the growing demand. The current zone designation R-R Rural Residential District allows for only single-family detached development at a very low density of one dwelling unit per acre. R-2 zoning permits a variety of housing types, including single-family attached townhomes and green courts. To the west, across Sable Boulevard is an established multi-family development and is zoned R-2 Medium Density District. The rezone would allow for an extension of the R-2 zone district and provide a seamless transition from single-family detached to the east, single-family attached on-site, and finally, multi-family to the west.

The location of this rezoning request is within the Established Neighborhood Placetype of the Aurora Places Comprehensive Plan. The residential uses permitted within the proposed R-2 zone district are also identified as primary land uses within this placetype, making this rezone proposal consistent with the Comprehensive Plan.

Staff finds that the proposed Zoning Map Amendment complies with the criteria for approval found in Section 146-5.4.1.C.a because:

- The application is consistent with the Aurora Places Comprehensive Plan “Housing for All” principle by proposing a residential zone district that permits a variety of housing options and is consistent with the Emerging Neighborhoods placetype by proposing a residential zone district that is compatible with the primary land uses found in this placetype;
- The proposed planned future use of single-family attached townhomes and green court dwellings are compatible with the surrounding development in terms of size, scale, height, density, and multi-modal traffic impacts;
- The proposed zoning is consistent with the surrounding zoning and development patterns in the area; and,
- The proposed change in zoning will not create dislocations of tenants or occupants of the property.

Exhibits provided for review and consideration are as follows:

Exhibit A: Zoning Ordinance

Exhibit B: Vicinity Map

Exhibit C: Letter of Introduction

Exhibit D: Planning Commission Report, Dated 11/21/23

Exhibit E: City Council Staff Presentation Slides

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## FISCAL IMPACT

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact       Budgeted Expenditure Impact       Non-Budgeted Expenditure Impact  
 Workload Impact       No Fiscal Impact

### REVENUE IMPACT

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

### BUDGETED EXPENDITURE IMPACT

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

### NON-BUDGETED EXPENDITURE IMPACT

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

### WORKLOAD IMPACT

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

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## QUESTIONS FOR COUNCIL

Does the City Council wish to approve the ordinance to amend the City of Aurora Zoning Map?

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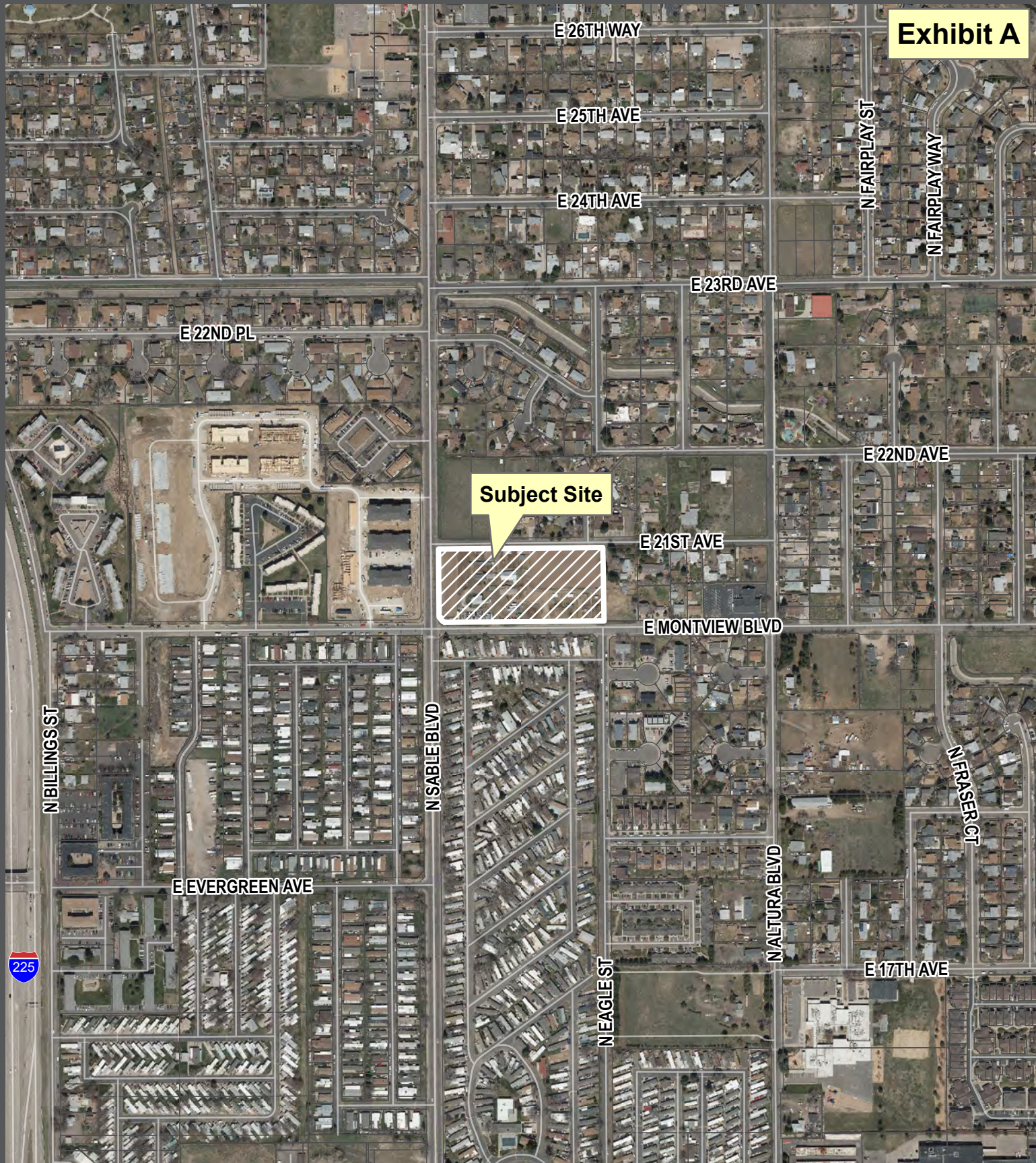
## LEGAL COMMENTS

The City Council is the governing body of the City and has the authority to approve the Official Zoning Map and amendments to that map. (UDO §146-5.1.1.B)

The City Council shall conduct a public hearing on the application. (UDO §146-5.4.1.C.2.c)

Changes to the Zoning Map for individual parcels shall only be approved if City Council finds that the change to the Zoning Map is required because of changed conditions or circumstances on the property or the surrounding area and (a) the applicant has demonstrated that the proposed rezoning is consistent with the spirit and intent of the Comprehensive Plan, the other policies and plans adopted by the City Council, and with the purpose statement of the proposed new zone district(s); (b) the applicant has demonstrated that the size, scale, height, density, and multi-modal traffic impacts of the proposed rezoning are compatible with surrounding development or can be made compatible through approval conditions; and (c) the application demonstrates that the change in zoning will not create significant dislocations of tenants or occupants of the property, or that any impacts are outweighed by

other public benefits or progress toward other Comprehensive Plan goals that would be achieved by approval of the application. (UDO §146-5.4.1.C.3.a.ii) (McClelland)



**Sable Blvd Townhomes  
Zoning Map Amendment  
Site Plan with Adjustments**

**City of Aurora, Colorado**



*Aurora is  
Worth Discovering!*



Case Number: 2023-2003-00, 2023-4006-00  
Development Application: #2305-00

**Planning &  
Development Services**  
15151 E. Alameda Parkway  
Aurora CO 80012 USA  
AuroraGov.org  
303.739.7217  
GIS@auroragov.org



July 18<sup>th</sup>, 2023

Office of Development Assistance, City of Aurora  
15151 E. Alameda Parkway, Suite 5200  
Aurora, CO 80012

**RE: Sable Blvd. Townhomes**

**KA#: 222010**

Dear Jazmine Marte & Dan Osoba,

On behalf of the applicant, Utah Development Group, we are pleased to submit an application for a Site Plan, Plat, and Zone Map Amendment for a townhome community project.

The following team has been assembled to complete this application:

- Developer – Marco Diaz: Utah Development Group - 324 S. 400 W. Suite 175 Salt Lake City, UT 84101 / (801) 641-8956 / marco@utahdevelopmentgroup.com
- Land Planner – Jeff Neulieb: KEPHART – 2555 Walnut St. Denver, CO 80205 (303) 832-4474 / jeffn@kephart.com
- Architect – John Davis: Layton Davis Architects - 2005 E 2700 S Suite 200 SLC, UT 84109 / (801) 487-0715 / john@laytondavisarchitects.com
- Civil Engineer / Landscape Architecture – Woody Bryant: Engineering Service Company - 14190 East Evans Avenue Aurora, Colorado 80014 / (303) 337-1393 / wbryant@engineeringserviceco.com

### Site Context

The proposed townhome development is located along the east side of Sable Boulevard in between E. 21<sup>st</sup> Avenue and E. Montview Blvd. The site includes roughly 3.8 acres and is zoned R-R rural residential with the intention of rezoning to R-2 to allow for townhome development. Single-family residential uses border the property to the north and east, while manufactured housing and multifamily development border the property to the south and west. The Aurora Places Comprehensive Plan designates this property as an established neighborhood and encourages single-family attached residential development. This proposed townhome community includes approximately 70 for-sale units creating an overall density of 18.4 du/ac.

### Site Plan

The proposed townhome development is arranged in a green court configuration where front doors face a common shared open space. This type of design configuration is allowed within the R-2 zoning designation and was the preferred design solution between the applicant and City planning staff. Each Townhome unit has an attached two-car garage that is accessed from an





alley. Alleyways can be accessed from E. 21<sup>st</sup> Ave. and E. Montview Blvd. The neighborhood will be served by a mix of 140 attached garage parking spaces and 24 proximate internal surface and 11 on-street parallel parking. The proposed parking ratio is 2.5 spaces per dwelling unit.

The green courts are approximately 48' in width and 265' in length and will be programmed with a variety of passive and active recreational activities. City code requires green courts to be a minimum of 30' in width, however the design team decided to increase the size to make them a useable amenity within the project. Buildings are arranged in 4 and 5 plex configurations and are a total of three stories in height. The front door of each unit either faces a green court or Sable Boulevard. Locations of plant material have been meticulously laid out to provide interest along the street, enhancement of amenity spaces and buffering of parking areas.

### **Zone Map Amendment & Site Plan Approval Summary:**

As part of this application, a rezoning from R-R to R-2 will be required. The rezoning of the property will be required to allow for townhomes to be built on the property. July 13<sup>th</sup>, 2021, City planning staff reviewed the requested change on to R-2 and the request was labeled as “neutral”. The following explanation below justifies the zone map amendment request for approval:

*According to section 5.4.1.C.3.a of the Aurora Unified Development Ordinance, “An application for initial zoning, rezoning, and changes to the Zoning Map for individual parcels or small areas shall only be recommended if the Planning Director and the Planning and Zoning Commission finds that the following criteria have been met, and shall only be approved if City Council finds that the following criteria have been met.”:*

*(a) The applicant has demonstrated that the proposed initial zoning or rezoning is consistent with the spirit and intent of the Comprehensive Plan, with other policies and plans adopted by the City Council, and with the purpose statement of the proposed new zone district(s);*

Justification - The proposed rezone from R-R to R-2 is supported by several contextual factors and aligns with the goals of the Aurora Places Comprehensive Plan. The surrounding land uses on the property's borders provide a clear indication of the appropriate zoning designation. Single-family residential uses border the property to the north and east, indicating that these areas are primarily intended for low-density housing. On the other hand, manufactured housing and multifamily development border the property to the south and west, suggesting a higher density of housing in these areas.

By rezoning the property to R-2, the zoning would match the context to the west, where higher-density housing is already present. This ensures a harmonious transition in building scale and density between the proposed development and the existing multifamily developments. Additionally, the R-2 zoning designation would provide a suitable buffer between the higher-density housing to the west and the adjacent single-family neighborhoods to the east and north.



This buffer would help maintain the character and scale of the established single-family neighborhoods, preserving their quality of life and property values.

Furthermore, the Aurora Places Comprehensive Plan designates this property as an established neighborhood and encourages single-family attached residential development. This designation acknowledges the existing character of the area and supports the addition of attached townhomes as a suitable housing option. According to the Aurora Housing Study's Figure 17, Subarea A of the city severely lacks a mid to high level attached townhome product. By allowing the proposed development of attached townhomes through the R-2 rezone, the city would address this housing shortage and provide a diverse range of housing options within the subarea.

Overall, the proposed rezone to R-2 is justified based on the surrounding land uses, the need for a transition in building scale, the support of the Aurora Places Comprehensive Plan, and the identified housing shortage within Subarea A. The rezone would contribute to the city's goal of providing high-quality housing options across all socioeconomic levels and help create a more balanced and inclusive community within Aurora.

*(b) The applicant has demonstrated that the size, scale, height, density, and multi-modal traffic impacts of the proposed initial zoning or rezoning are compatible with surrounding development or can be made compatible with surrounding development through approval conditions; and*

Justification – The proposed rezone from R-R to R-2 is supported by several contextual factors and aligns with the goals of the Aurora Places Comprehensive Plan. The surrounding land uses on the property's borders provide a clear indication of the appropriate zoning designation. Single-family residential uses border the property to the north and east, indicating that these areas are primarily intended for low-density housing. On the other hand, manufactured housing and multifamily development border the property to the south and west, suggesting a higher density of housing in these areas.

By rezoning the property to R-2, the zoning would match the context to the west, where higher-density housing is already present. This ensures a harmonious transition in building scale and density between the proposed development and the existing multifamily developments. Additionally, the R-2 zoning designation would provide a suitable buffer between the higher-density housing to the west and the adjacent single-family neighborhoods to the east and north. This buffer would help maintain the character and scale of the established single-family neighborhoods, preserving their quality of life and property values.

Additionally, a comprehensive traffic impact study has been diligently prepared to assess the potential effects of the zone change. The study demonstrates that the proposed rezone will not result in any adverse impacts on traffic conditions. This finding indicates that the surrounding road infrastructure is sufficient to accommodate the projected increase in traffic resulting from the zone change. Therefore, the proposed development can be expected to integrate smoothly into the existing transportation network without causing significant disruptions or congestion.





*(c) The application demonstrates that the change in zoning will not create significant dislocations of tenants or occupants of the property, or that any impacts are outweighed by other public benefits or progress toward other Comprehensive Plan goals that would be achieved by approval of the application.*

Justification - There are currently no residents or occupancy within the proposed development, therefore the project does not create any significant dislocations.

Additionally, the proposed Site Plan complies with the site plan approval criteria found in section 146-5.4.3.B.c.i based on a variety of reasons. The proposal is identified as a secondary land use in the Emerging Neighborhood Placetype in the Aurora Places Plan and furthers the “Housing for All” principle. The proposal is compatible with the surrounding land uses and adverse impacts have been mitigated to the extent practicable. Lastly, the existing City infrastructure has sufficient sewer capacity to accommodate the proposed development and improvements, including sidewalks, trail connections, and various other public enhancements. These upgrades will not only enhance the City's infrastructure but also contribute to overall public improvements.

#### **Code Adjustment Summary:**

To develop this project under the current UDO a series of code deviations are being requested. A list of code deviations is described below along with justification for each deviation:

Section 4.2.2. Table 4.2-1: 1,600 SF lot area minimum for Single-family attached fronting a public street for a private street meeting public street standards in an R-2 zoning district.

*Adjustment: To reduce the minimum lot area of a single-family attached lot fronting a public street from 1,600 SF to 1,000 SF on the 9 lots fronting Sable Blvd.*

Justification: Given the various constraints posed by the infill condition, complying with the minimum lot size requirement for this project proves to be excessively restrictive. However, by implementing a reduction in the minimum lot size, we can unlock the potential to increase the number of units on the site. This adjustment allows us to optimize land utilization and provide housing opportunities to a greater number of individuals and families.

To ensure a seamless transition and address any potential challenges associated with accommodating an increased number of units, we have taken proactive measures to enhance the overall living experience for the residents. One key aspect of our approach is the expansion of the size of the green courts. By allocating more space to these communal areas, we create vibrant and inviting environments where residents can connect with nature, relax, and engage in recreational activities.

By striking a balance between increasing the number of units and expanding the green courts with added amenities, we aim to achieve a harmonious integration of residential density and recreational spaces. This approach not only addresses the constraints of the infill condition but

also ensures that the community thrives in a sustainable and livable environment that promotes well-being and fosters a sense of belonging.

Section 4.2.3.A.2 Table 4.2-5: The minimum lot area of single-family attached dwellings (alley loaded only) must be 1,380 SF for end units and 1,250 SF for interior units.

*Adjustment: To decrease the minimum lot size of end units from 1,380 SF to 1,100 SF & to decrease the minimum lot size of interior units from 1,250 SF to 1,050 SF.*

Justification: Given the various constraints posed by the infill condition, complying with the minimum lot size requirement for this project proves to be excessively restrictive. However, by implementing a reduction in the minimum lot size, we can unlock the potential to increase the number of units on the site. This adjustment allows us to optimize land utilization and provide housing opportunities to a greater number of individuals and families.

To ensure a seamless transition and address any potential challenges associated with accommodating an increased number of units, we have taken proactive measures to enhance the overall living experience for the residents. One key aspect of our approach is the expansion of the size of the green courts. By allocating more space to these communal areas, we create vibrant and inviting environments where residents can connect with nature, relax, and engage in recreational activities.

By striking a balance between increasing the number of units and expanding the green courts with added amenities, we aim to achieve a harmonious integration of residential density and recreational spaces. This approach not only addresses the constraints of the infill condition but also ensures that the community thrives in a sustainable and livable environment that promotes well-being and fosters a sense of belonging.

Section 4.2.3.A.4 Table 4.2-6: The minimum building setbacks for single-family attached dwellings (alley loaded only) is a 10 ft. front setback and 10 ft. side setback for end walls.

*Adjustment: To decrease the minimum front setback from 10 ft. to 4.5 ft. and to decrease the side end wall setback from 10 ft. to 0.5 ft.*

Justification: Considering the various limitations imposed by the infill condition, adhering to the minimum front and end wall setbacks proves to be excessively restrictive. However, by implementing reduced setbacks, we are able to accommodate a higher density of units on the site. This adjustment not only allows for an increased number of residences but also enables us to create more spacious green court areas for the community's benefit, in contrast to allocating land for private individual front and side yards.

Recognizing the potential challenges that may arise from accommodating a larger number of units, we have taken proactive measures to ensure the residents' satisfaction. To mitigate any potential issues, we have significantly expanded the size of the green courts. By doing so, we



have created ample open spaces where residents can relax, socialize, and engage in recreational activities. Furthermore, we have incorporated additional amenities within these green court areas to enhance their functionality and appeal.

Additional architectural enhancements have been thoughtfully integrated into the side elevations of the townhomes, resulting in a more visually appealing and harmonious design. These enhancements include the introduction of enhanced cementitious siding on the right elevation and the incorporation of additional brick veneer on the left elevation. These elements have been strategically employed to effectively break up the monotony that may have been previously associated with the stucco on the side elevations.

The enhanced cementitious siding on the right elevation not only adds texture and depth to the facade but also contributes to the overall durability of the structure. Its clean lines and modern aesthetic blend seamlessly with the overall architectural theme, creating an inviting and stylish appearance that complements the surrounding environment.

On the left elevation, the addition of brick veneer brings a timeless and classic touch to the townhomes. The brickwork introduces a warm and rich color palette, contrasting beautifully with the stucco and providing a pleasing visual balance. This choice not only enhances the aesthetic appeal but also imparts a sense of sophistication and character to the townhomes.

By striking a balance between increased density and the provision of larger green courts, we aim to create a harmonious living environment that meets the needs of the community while maximizing the use of the available space.

*Section 4.2.3.C.1.b.xi: All Green Court Dwellings shall have front entry features (porches or stoops) fronting on a Green Court open space or a street. If porches are provided to meet this requirement, they shall be a minimum 45 square feet in area and a minimum of five feet wide in the narrowest porch dimension. Porches and stoops facing the Green Court open space may extend up to five feet beyond the building façade provided that no roof or associated structure exceeds one story in height.*

*Adjustment: To adjust the porch/ stoop requirement on the first level of each townhome.*

Justification: Taking into account the numerous constraints associated with the infill condition of this project, we have made deliberate efforts to prioritize the well-being and satisfaction of the residents by designing larger and more functional green courts. These green courts serve as essential communal spaces, providing additional amenities that enhance the overall living experience within the development.

However, one particular challenge arose when considering the incorporation of porches or stoops on the first level of each townhome. While these features may offer certain advantages, such as a welcoming entrance or outdoor seating area, they would also lead to a reduction in the size of the green courts and an increase in the overall lot size. Recognizing the importance of



preserving the spaciousness and functionality of the green courts, we have devised a mitigation measure to address this concern.

To strike a balance between providing desirable features and maintaining the integrity of the green courts, we have introduced balconies on the second and third levels of each townhome. These balconies have been strategically positioned to overlook the green courts, offering residents an elevated vantage point to enjoy the surrounding greenery and foster a sense of connection with nature. By locating the balconies on higher levels, we not only preserve the size of the green courts but also create an elevated outdoor space that adds an element of privacy and tranquility for the residents.

The balconies serve as an excellent alternative to porches or stoops, ensuring that the townhome units still have outdoor spaces where residents can unwind, socialize, and enjoy the views. Additionally, the balconies provide an opportunity for residents to personalize their living spaces with plants, seating arrangements, and other personal touches.

By incorporating these balconies as a thoughtful mitigation measure, we maintain the integrity and usability of the green courts while simultaneously offering residents an appealing outdoor space that complements their lifestyle. Our aim is to create a harmonious blend of functional green spaces and individualized townhome units, fostering a sense of community while respecting the unique preferences and needs of each resident.

Section 4.2.3.C.1.b.viii.: Both end units of each group of attached Green Court Dwellings shall abut a public or private street or alley, without intervening common open space between the side wall of the end unit and the right-of-way of the private or public street or alley, except as provided in Subsection ix below.

*Adjustment: To adjust the Intervening Common Open Space requirement.*

Justification: In response to the significant grade change of the site, we have strategically placed several retaining walls along the periphery to ensure that these retaining walls do not encroach upon individual owned lots. Extending the end lot lines to align with the edge of the property line would result in the retaining walls falling within the boundaries of the individual lots. However, to prevent the burden of ownership and maintenance falling on individual homeowners, the end lots have been reduced in size and the homeowners association (HOA) will assume responsibility for the ownership and upkeep of the retaining walls.

Section 4.2.3.C.(1)(B)(v): In Subareas A and B, no more than 14 dwelling units may face the same Green Court open space.

*Adjustment: To increase the number of allowed green court dwellings on a single green court from 14 to 18.*

Justification: Due to the infill nature of the site, the site plan has been designed to provide contiguous, useable green courts without interruption from 21<sup>st</sup> Ave. to Montview Blvd.



Additional units facing the same green court creates three contiguous open spaces courts within the project that will be programmed with a variety of recreational activities. An adjustment from this requirement also allows for increased building and open space efficiency. A north/south street grid connects E. 21<sup>st</sup> Ave. with E. Montview Blvd. Additionally, green courts internal to the site will connect with the adjacent existing sidewalk and pedestrian network.

Overall, the project's intent is to provide a high quality, sensitively designed residential community within the City of Aurora to help meet the current and future market demand for housing in this area. As always, our team is excited to continue work with Aurora staff throughout this process.

*Section 4.7.9.T.2.c.: Retaining walls in residential development shall be a maximum of 30 inches in front yard setback.*

*Adjustment: To adjust the maximum retaining wall height requirement for residential development from 30 inches to 48 inches.*

Justification: The need for a retaining wall along the Sable Boulevard frontage, and a portion of the 21st Avenue and Montview Boulevard frontages, is due to the finished floor elevations of the proposed western units vis-à-vis the elevation of Sable Boulevard. The minimum finished floor elevations for the western units of the development (those facing Sable Boulevard) were established based on the depth of the closest public sanitary sewer infrastructure, located in 21st Street. The existing conditions of the property and the surrounding roads, as well as the required street improvements, contributed to the need and height of the retaining walls. The adjustment allows an increase to the maximum retaining wall height to 48 inches which will enable the development to overcome these site constraints and optimize land use without compromising safety or stability.

Sincerely,



Jeff Neulieb  
KEPHART

## City of Aurora Planning Commission Case Report

Project Title: Sable Blvd Townhomes – Zoning Map Amendment and Site Plan with Adjustments
Date: November 21, 2023
Development Application Number: DA-2305-00
Case Number: 2023-2002-00; 2023-4006-00
Case Manager: Dan Osoba
Applicant: Utah Development Group
General Location: Northeast Corner of Sable Blvd and E. Montview Blvd
Ward: II

**Project Summary:**

The applicant, Utah Development Group, is requesting a recommendation of approval of a Zoning Map Amendment (Rezone) for 4.4 acres from R-R (Rural Residential) District to R-2 (Medium Density) District and requesting approval of a Site Plan for 70 townhomes dwellings in 14 buildings. The site is located at the northeast corner of Sable Boulevard and E. Montview Boulevard. There is an existing single-family detached home, several outbuildings, and an unimproved storage area on the property, which is to be demolished with this proposal. The site is bound by single-family residential development to the north and east. To the west is multi-family and to the south is manufactured homes. The applicant has requested adjustments to Unified Development Ordinance (UDO) standards relating to lot size, setbacks, building design, green court standards, and retaining wall requirements. These adjustments are discussed under the Adjustments section in this report.

The proposed townhome lots range in size from 1,000 square feet to 1,100 square feet and have a minimum lot width of 23 feet. Each home is proposed with a two-car garage accessed from an alley or shared drive in the rear of the home. The townhomes will front either a street (Sable Boulevard) or green courts internal to the site. Underground stormwater detention and water quality are also proposed to serve this development under the green court areas. The townhomes are of modern style, meeting or exceeding the building design requirements of the UDO, and include brick veneer, cement siding, and a three-coat stucco system. Architectural elements include varying parapet height, balconies, and front door awnings. This is an infill proposal, limited by surrounding development and a limited street network, overhead power lines on Sable Boulevard, and a significant slope from east to west. Considerable improvements are required to adjacent roadways and sidewalks for all three surrounding rights-of-way.

**Applicant's Requests:**

- Zoning Map Amendment Recommendation of Approval
- Site Plan with Adjustments Approval

**Neighborhood Comments:**

Nine (9) abutting property owners and eleven (11) registered neighborhood organizations within one mile of the property received a referral for the proposed application. No comments were received during the development review of this application and, therefore, a neighborhood meeting was not held.



**Items Discussed During Development Review:**

- Zoning Map Amendment
- Green Court Design
- Adjustments

**Results of Development Review:**

**Zoning Map Amendment:** The proposed Zoning Map Amendment is requested to address housing trend changes in the surrounding area and City-wide. These trend changes include the increasing need for a variety of housing options at varying price points and the current housing availability not meeting the growing demand. The current zone designation R-R (Rural Residential District) allows for only single-family detached development at a very low density of one dwelling unit per acre. R-2 zoning permits a variety of housing types, including single-family attached townhomes and green courts. Across Sable Boulevard is an established multi-family development and is zoned R-2 (Medium Density) District. The rezone would allow for an extension of the R-2 zone district and provide a seamless transition from single-family detached to the east, single-family attached on-site, and finally, multi-family to the west.

The Aurora Places Plan supports the proposed zone districts associated with this site and the anticipated residential uses. The location of this rezoning request is within the Established Neighborhood placetype. This placetype is predominately characterized by residential areas, including those with single-family detached dwellings. The residential uses permitted within the R-2 zone district are also identified as primary land uses within this placetype, making this rezone and townhome proposal consistent with the existing placetype.

**Green Court Design:** Green Court Dwellings aims to contribute to a mix of housing types and land uses by permitting more flexible arrangements of buildings and open spaces. Typically, green court dwelling lots are smaller than average lots because they share a common area within a higher-density format and are oriented perpendicular to a street. In initial meetings with the applicant, staff highlighted the importance of creating usable green courts with both passive and active recreation that were not impeded by either grade or drainage. The proposal prioritizes the amenities of the green court, creating various nodes of activity for each green court area. Staff worked with the applicant to provide several varied amenities throughout the proposal, including areas specified for active and passive recreation; social gathering areas with a trellis or pergola with pavers, seating, and table space; and play structures. The applicant worked with the topography and drainage, using the landscape to create various views, seating, grill areas, active lawns, and plantings. Underground stormwater detention and water quality are provided under these green court spaces to utilize the limited space on-site efficiently. The green court design is age-inclusive, ranging from play space to plazas and seating areas.

**Adjustments:** The site plan has seven major adjustments to the City of Aurora UDO. Two adjustments are to reduce lot size, one relates to setback requirements; three are to adjust or remove green court-specific requirements; and one is to increase the maximum height of retaining walls. Staff supports these adjustments due to the numerous constraints on this infill development site, which limit options to comply fully with the UDO, and the applicant has taken steps to minimize the number and extent of the adjustments. Discussion of the adjustments are separated into related sections and are all consistent with the Criteria for Approval for Major Adjustments found in Section 146-5.4.4.D.3 for the reasons listed below.

*Lot Size Adjustments*

1. The first adjustment is to reduce the minimum lot area required by Section 146-4.2.2, Table 4.2-1 for the single-family attached townhomes fronting onto a public street from 1,600 square feet to 1,000 square feet for the nine lots fronting Sable Boulevard. This adjustment is the first of two adjustments for lot area reduction in order to overcome the various site constraints posed by the infill condition of the property. Complying with the minimum lot size requirements would be excessively restrictive and make the project infeasible. The applicant indicates that this adjustment allows the land use to be optimized and provides housing opportunities to a greater number of individuals and families.
2. The second adjustment is to reduce the minimum lot area of end units of a townhome facing a green court from 1,380 square feet to 1,100 square feet and to reduce the minimum lot area of interior units of a townhome facing a green court from 1,250 square feet to 1,050 square feet required by Section 146-4.2.3.A.2, Table 4.2-5. Again, this adjustment is being requested in order to optimize the land use on the property and provide housing opportunities to a greater number of individuals and families. For both this adjustment and adjustment number one, the applicant has offset the size of the lots by increasing the area for common open space within the green court areas. This additional area aims to create a seamless transition of density from low density to the east, medium density on this property, and high density to the west as well as create a sustainable and livable environment for future residents. Staff is supportive of the adjustment requests for the two (2) lot size adjustments as the perception of development quality will not be diminished by the request and adverse impacts to surrounding development will be mitigated.

*Setbacks*

3. The third adjustment is to reduce the front setback from 10 feet to 4.5 feet and to reduce the side setback adjacent to the exterior townhome units from 10 feet to 0.5 foot as required by Section 146-4.2.3.A.4, Table 4.2-6. This adjustment has been requested to reduce the amount of limited private open space on the individual lots and create additional common open space within the green court areas. Because these green court areas are larger, further enhancements and amenities have been added to them including playground areas, outdoor seating and gathering spaces, and recreation areas. The landscape buffer area is still provided adjacent to the exterior of the end units of the townhomes and will be maintained by the HOA instead of privately maintained by the individual future homeowners. Staff is supportive of this adjustment because the perception of development quality will not be diminished by the request.

*Green Court Standards*

4. The townhomes interior (east of Sable Boulevard) are considered green court dwellings per the UDO as the units front onto a green open space and are accessed by an alley or private drive in the rear of the unit. The standards for green court dwellings are separate from the typical townhome unit, and therefore, the applicant has requested three adjustments to the green court standards. The fourth overall adjustment request is to waive the requirement found in Section 146-4.2.3.C.1.B.XI, which requires that all green court dwellings have an entry porch or stoop fronting onto the green court area. This adjustment has been requested because they would encroach into the amenitized green court common spaces maintained by the HOA and if they were provided, then the overall lot size would need to be increased. To mitigate this request, additional balconies have been provided on the second and third levels on all elevations. The balconies serve as an alternative to the porch or stoop from a design and livability perspective and maintain the integrity and usability of the green court area.

Staff worked with the applicant to provide additional architectural enhancements including additional brick veneer and enhanced cementitious siding to break up the monotonous portions of the elevation. Staff is supportive of this adjustment request because the perception of development quality will not be diminished by this request and the adverse architectural and design impacts have been mitigated.

5. The fifth adjustment request is to waive the requirement found in Section 146-4.2.3.C.1.B.VIII, which requires that both end units of the green court dwellings shall abut a public or private street or alley without intervening common open space between the side wall of the end unit and the adjacent right-of-way. The applicant has requested this adjustment due to the significant grade change on the site and retaining walls placed along the periphery. These retaining walls are placed in intervening common open space between the end units and the adjacent right-of-way. To prevent the burden of ownership and maintenance of those retaining walls on future homeowners, the HOA will maintain the retaining walls as part of that common open area. Staff is supportive of this request as the perception of development quality will not be diminished by the request.
6. The sixth request is to increase the number of allowed green court dwellings on a single green court from 14 to 18 as required by Section 146-4.2.3.C.1.B.V. The additional units facing the same green court create three contiguous open spaces within the project that are programmed with recreational activities and enhanced by amenities. The adjustment from this requirement also allows for an increased building and open space efficiency on-site when coupled with the adjustments for lot size and setbacks. Staff is supportive of this adjustment because the perception of development quality will not be diminished by the request.

#### *Retaining Wall*

7. The seventh adjustment request is to increase the maximum height of retaining walls from the maximum 30 inches to 48 inches per Section 146-4.7.9.T.2. Retaining walls are needed along the Sable Boulevard frontage due to the existing considerable grade on-site and requirements for the finished floor elevation based on the depth of the closest public sanitary sewer infrastructure in E. 21<sup>st</sup> Avenue. The adjustment allows an increase in the wall height to enable the development to overcome the site constraints and optimize the land use without compromising safety or stability. The City of Aurora Public Works Department has reviewed this adjustment request and has approved the requested adjustment. The applicant has provided additional architectural enhancements, such as enhanced cementitious siding and brick veneer, to break up the monotonous elevation adjacent to these retaining walls. Staff is in support of this adjustment request because the perception of development quality will not be diminished by the request, and adverse impacts have been mitigated.

#### **Summary of Staff Recommendations:**

Recommend approval of the Zoning Map Amendment and of the Site Plan with adjustments and two conditions. (See the last page of the report for the vote.)

## Detailed Case Analysis

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### Public Notification:

A legal notice appeared in the Aurora Sentinel on November 9, 2023. The applicant has submitted Certificates of Mailing for public hearing notices to registered neighborhood organizations and adjacent property owners. Public hearing signs indicating the Planning and Zoning Commission's public hearing date and time were also posted on the property.

### Community Referrals:

There are eleven registered organizations within one mile of the site: Hillcrest Village, Sable Altura Chamber, CLEAN, Northwest Aurora Community, Norfolk Glen, Laredo/Highline, A Box State of Mind, House of Pain East, Chambers Heights Neighborhood, Cottage Grove Homeowner, and the Ex-Nihilo Foundation.

### Consistency with the Aurora Places Plan:

The subject property is within the Established Neighborhood placetype. The Established Neighborhood placetype is characterized by predominantly residential areas with a variety of unit types, including single-family detached and attached, and multi-family, typically constructed between 1950 and 1990. This placetype often deviates from the traditional grid pattern of streets and contains a more curvilinear pattern. Although primarily a residential area, this placetype may also support limited retail, service, and office uses located at intersections or along major perimeter streets. Established Neighborhood primary land uses include single-family detached and attached and multi-family residential of various densities, along with schools, parks, and religious institutions. Supporting uses can include appropriately scaled and located restaurants, retail, commercial services, community gardens, and other neighborhood-serving gathering places. The proposed R-2 Medium Density District is well compatible with the designated placetype and permits compatible uses, primarily identified as residential uses in the Comprehensive Plan. This proposal is also consistent with the "Housing for All" principle by providing a variety of housing types at varying price points throughout the city.

### Conformance with Code Criteria:

#### 1. Zoning Map Amendment Criteria:

Rezoning criteria are found in City Code Section 146-5.4.1.C.a. and are summarized as follows: *i) The change to the Zoning Map is needed to correct an error (change in the character of surrounding areas does not constitute an error in the map); or ii. The change to the Zoning Map is required because of changed conditions or circumstances on the property or in the surrounding area and:*

- (a) The applicant has demonstrated that the proposed initial zoning or rezoning is consistent with the spirit and intent of the Comprehensive Plan, with other policies and plans adopted by the City Council, and with the purpose statement of the proposed new zone district(s);*
- (b) The applicant has demonstrated that the size, scale, height, density, and multi-modal traffic impacts of the proposed initial zoning or rezoning are compatible with surrounding development or can be made compatible with surrounding development through approval conditions; and*
- (c) The application demonstrates that the change in zoning will not create significant dislocations of tenants or occupants of the property, or that any impacts are outweighed by other public benefits or progress toward other Comprehensive Plan goals that would be achieved by approval of the application.*

The proposed Zoning Map Amendment complies with the criteria for approval because:

- The application is consistent with the Aurora Places Comprehensive Plan “Housing for All” principle by proposing a residential zone district that permits a variety of housing options and is consistent with the Emerging Neighborhoods placetype by proposing a residential zone district that is compatible with the primary land uses found in this placetype;
- The proposed planned future use of single-family attached townhomes and green court dwellings are compatible with the surrounding development in terms of size, scale, height, density, and multi-modal traffic impacts;
- The proposed zoning is consistent with the surrounding zoning and development patterns in the area; and,
- The proposed change in zoning will not create dislocations of tenants or occupants of the property.

## 2. Major Site Plan Approval Criteria

Site Plan approval criteria are found in Section 146-5.4.3.B.2.c of the Unified Development Ordinance, and may be summarized as follows:

- a) *Complies with the applicable standards in this UDO, other adopted City regulations, any approved Master Plan that includes the property, and any conditions specifically applied to development of the property by the Planning and Zoning Commission or City Council in a prior decision affecting the property.*
- b) *The City's existing infrastructure and public improvements have adequate capacity to serve the proposed development;*
- c) *Shall be designed to preserve and protect natural areas and to integrate those areas into site design where practicable;*
- d) *Will improve or expand multi-modal connections with adjacent sites, neighborhoods and urban centers,*
- e) *The application is compatible with surrounding uses in terms of size, scale and building façade materials; and,*
- f) *The application mitigates any adverse impacts on the surrounding area to the degree practicable.*

The proposed Site Plan complies with the code criteria for approval for the following reasons:

- The application is compliant with the standards and requirements of the UDO, with the exception of the seven adjustment requests as listed in this report which comply with the adjustment criteria;
- The proposal is identified as a secondary land use in the Emerging Neighborhood Placetype in the Aurora Places Plan and furthers the "Housing for All" principle;
- There is capacity with the existing City infrastructure to accommodate the development and improvements, such as sidewalks as well as other public improvements, which will improve City infrastructure and public improvements;
- The proposal is compatible with the surrounding uses in terms of size, scale, and building façade materials; and,
- Adverse impacts have been mitigated to the extent practicable.

### Applicant Information:

Applicant: Utah Development Group, Marco Diaz  
 Agent: Kephart Community Planning and Architecture, Jeff Nuelieb

**Exhibits:**

Exhibit A	Vicinity Map
Exhibit B	Letter of Introduction
Exhibit C	Zoning Map Amendment Exhibit
Exhibit D	Site Plan
Exhibit E	Materials Board

**Project Statistics****Land Use Analysis**

Item	Existing	Proposed
Zoning	Rural Residential District (RR)	Medium-Density Residential District (R-2)
Aurora Places Placetype	Emerging Neighborhood	Emerging Neighborhood
Zoning; Subarea	Subarea A	Subarea A
Land Use	1 Single Family Detached Dwelling & outbuildings	70 Townhomes (Single Family Attached) which are permitted as per the UDO Table 3.2

Item	Existing	Permitted or Required	Proposed
Zone	Rural Residential District (R-R)	With approval from Planning Commission and City Council	Medium-Density Residential District (R-2)
Parcel Size	4.4-acres	N/A	4.4-acres
Number of Buildings	1	N/A	14 structures
Number of Dwelling Units	1	N/A	15.91 Dwelling Units per acre (70 dwelling units)
SFA Lot Area	N/A	1,600 sq ft	A mixture of 1,000 sq ft and 1250 sq ft
Building Height	Estimated 19'	38'	34'
Building Coverage	N/A	Per 146-4.2	57,934 s.f. (34.7%)
Hardscape Area	N/A	Per 146-4.7	57,499 s.f. (34.4%)
Landscape Area	N/A	Per 146-4.7	51,555 s.f. (30.9%)
Off-Street Parking Spaces	N/A	2 spaces per dwelling unit (70 dwelling units * 2) = 140 spaces	140 resident spaces

**Adjustments**

Adjustment Request	City Standard	Applicant Justification
To reduce the minimum lot area for a single-family attached townhome from 1,600 s.f. to	Section 146-4.2-2, Table 4.2-1	Applicant justification: This adjustment is the first of two adjustments for lot area reduction in order to overcome the various site constraints posed by the infill condition of the property. Complying with the minimum lot size requirements would be excessively restrictive and make the project infeasible.

1,000 s.f. on the 9 lots fronting Sable Blvd.		<p>The applicant indicates that this adjustment allows the land use to be optimized and provides housing opportunities to a greater number of individuals and families.</p> <p>Staff response: Staff is supportive of the adjustment requests for the two (2) lot size adjustments as the perception of development quality will not be diminished by the request and adverse impacts to surrounding development will be mitigated.</p>
To reduce the minimum lot size of end units from 1,380 s.f. to 1,100 s.f. and to reduce the minimum lot size of interior units from 1,250 s.f. to 1,050 s.f.	Section 146-4.2.3.A.2, Table 4.2-5	<p>Applicant justification: This adjustment is being requested in order to optimize the land use on the property and provide housing opportunities to a greater number of individuals and families. For both this adjustment and adjustment number one, the applicant has offset the size of the lots by increasing the area for common open space within the green court areas. This additional area aims to create a seamless transition of density from low-density to the east, medium density on this property, and high density to the west as well as create a sustainable and livable environment for future residents.</p> <p>Staff response: Staff is supportive of the adjustment requests for the two (2) lot size adjustments as the perception of development quality will not be diminished by the request and adverse impacts to surrounding development will be mitigated.</p>
To decrease the front setback from 10 feet to 4.5 feet and side setbacks from exterior walls from 10 feet to 0.5 feet.	Section 146-4.2.3.A.4, Table 4.2-6	<p>Applicant justification: This adjustment has been requested to reduce the amount of limited private open space on the individual lots and create additional common open space within the green court areas. Because these green court areas are larger, further enhancements and amenities have been added to them including playground areas, outdoor seating and gathering spaces, and recreation areas. The landscape buffer area is still provided adjacent to the exterior of the end units of the townhomes and will be maintained by the HOA instead of privately maintained by the individual future homeowners.</p> <p>Staff response: Staff is supportive of this adjustment because the perception of development quality will not be diminished by the request.</p>
To waive the requirement for green court units to provide a porch or stoop on the first level of each townhome.	Section 146-4.2.3.C.1.B.XI	<p>Applicant justification: This adjustment has been requested because they would encroach into the amenitized green court common spaces maintained by the HOA and if they were provided, then the overall lot size would need to be increased. To mitigate this request, additional balconies have been provided on the second and third levels on all elevations. The balconies serve as an alternative to the porch or stoop from a design and livability perspective and maintain the integrity and usability of the green court area.</p> <p>Staff response: Staff is supportive of this adjustment request because the perception of development quality will not be</p>

# SABLE BOULEVARD TOWNHOMES ZONING MAP AMENDMENT & SITE PLAN WITH ADJUSTMENTS

Project No: DA-2305-00  
Public Hearing  
City Council Public Hearing  
December 18, 2023

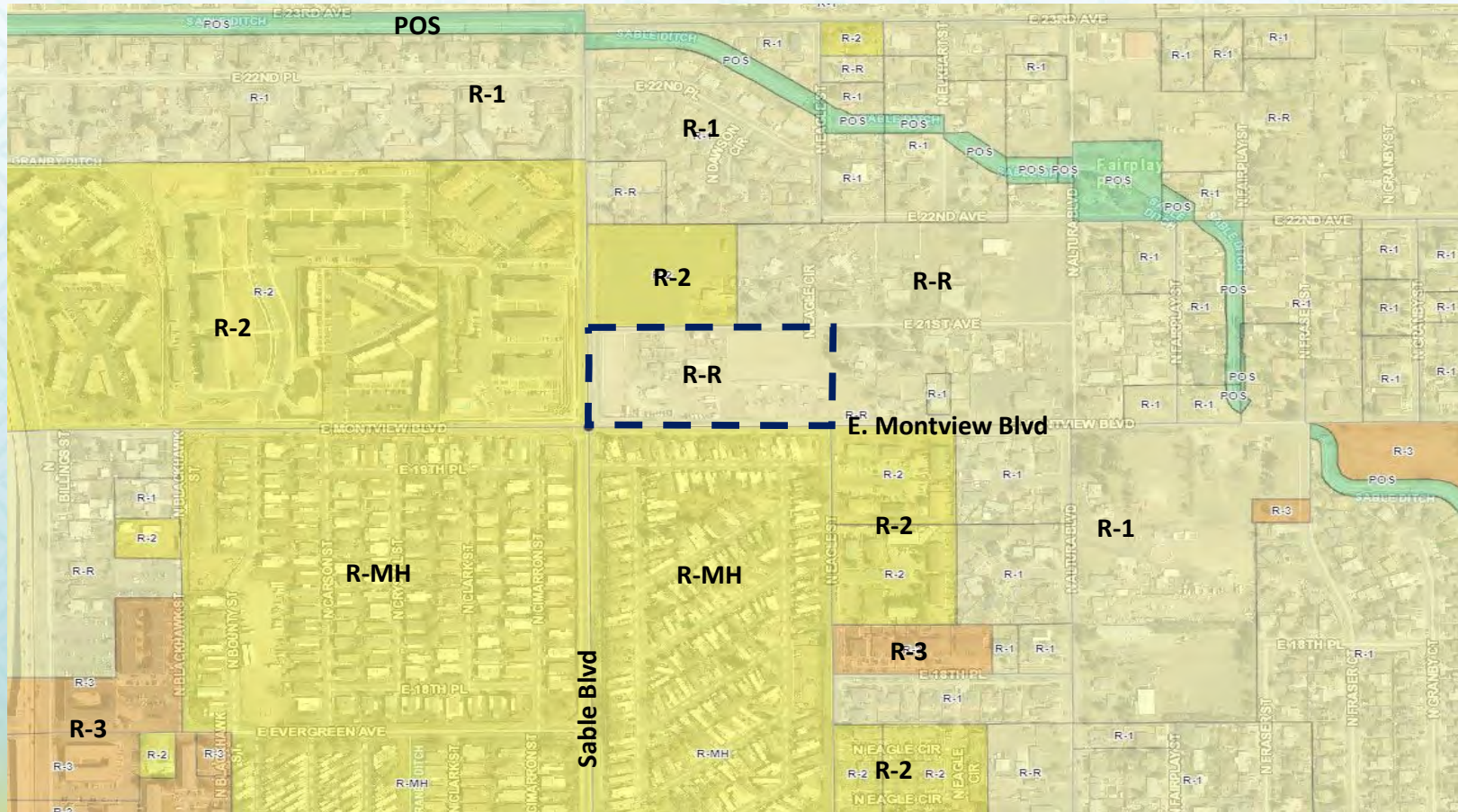




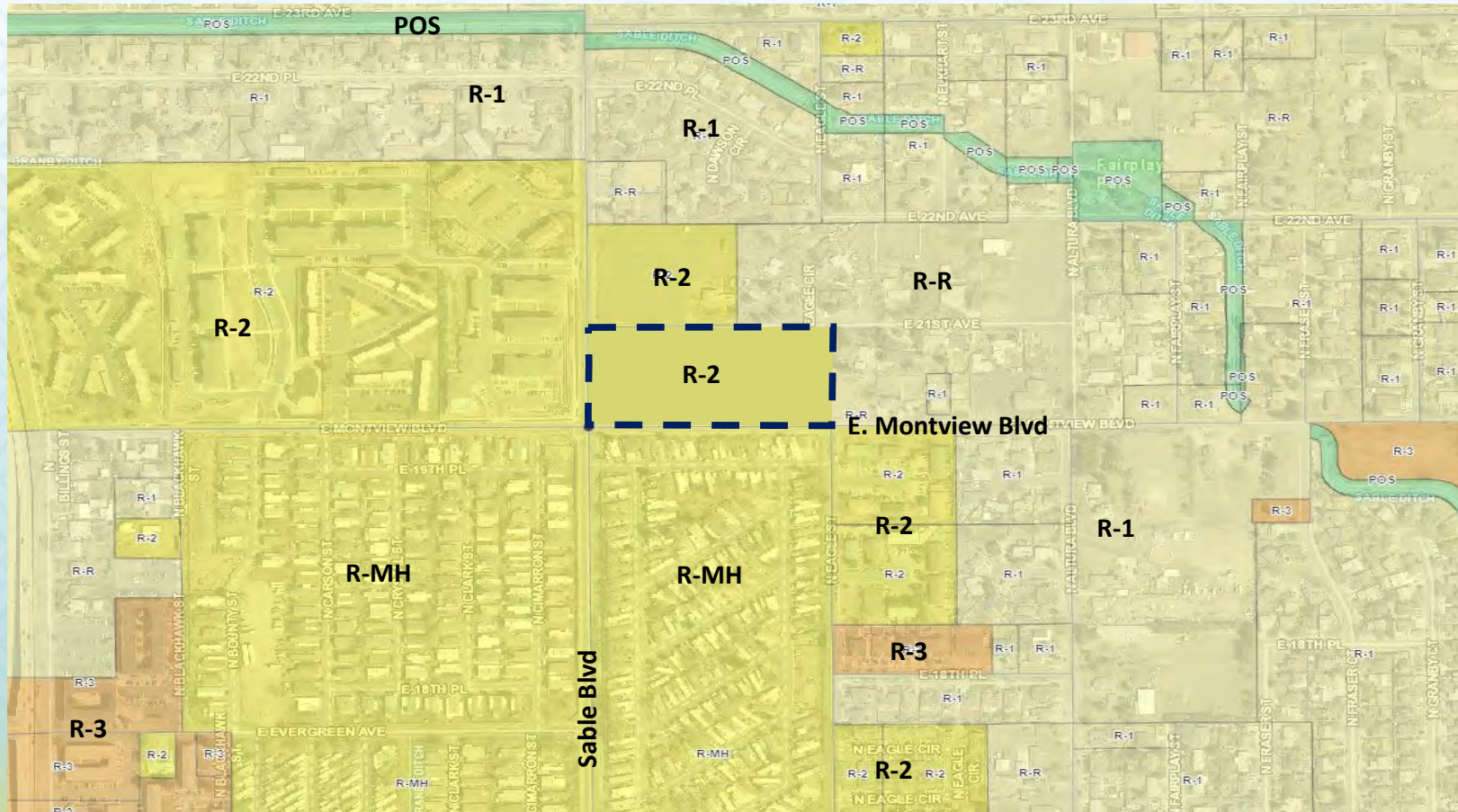
# VICINITY MAP



# ZONING MAP



# ZONING MAP – PROPOSED ZONING



ORDINANCE NO. 2023- \_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, FOR A ZONING MAP AMENDMENT TO REZONE 5.0244 ACRES OF LAND TO MEDIUM DENSITY RESIDENTIAL DISTRICT (R-2), LOCATED AT THE NORTHEAST CORNER OF SABLE BOULEVARD AND EAST MONTVIEW BOULEVARD

WHEREAS, the applicant has requested that 5.0244 acres of land located at the northeast corner of Sable Boulevard and East Montview Boulevard, County of Adams, State of Colorado (the “Property”), be rezoned from Rural Residential (R-R) to Medium Density Residential (R-2); and

WHEREAS, Section 146-5.4.1.C.3 of the Uniform Development Ordinance provides that all applications for the rezoning of property within the City of Aurora, Colorado (the “City”), shall be presented for a public hearing, both to the Planning and Zoning Commission, who shall render a recommendation to City Council, and to City Council for final decision; and

WHEREAS, on November 21, 2023, following a public hearing, the Planning and Zoning Commission voted to recommend the rezoning of the Property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. Based on the evidence presented at tonight’s public hearing, City Council finds and determines that: the rezoning is consistent with the spirit and intent of the Comprehensive Plan, is compatible with surrounding development, and would not result in a significant dislocation of tenants or occupants of the property.

Section 2. The Property, as more particularly described in “Exhibit A” attached hereto and incorporated herein, is zoned Medium Density Residential (R-2) and the zoning map is hereby amended in accordance with said zoning.

Section 3. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 4. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

PASSED AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

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

APPROVED AS TO FORM:

*Lena McClelland* <sup>RLA</sup>

\_\_\_\_\_  
LENA MCCLELLAND, Assistant City Attorney

**Legal Description:**

A Parcel of Land situated in the Northeast 1/4 of Section 31, Township 3 South, Range 66 West of the 6<sup>th</sup> Principal Meridian containing a portion of Tracts 27 and 28, Altura Farms tract Two, a subdivision plat recorded in Plat Book 1 at Page 18 in the office of the Adams County Clerk and Recorder, City of Aurora, County of Adams, State of Colorado, more particularly described as follows:

**Beginning** at the Center 1/4 Corner of said Section 31;

Thence N00°26'46"W along the West Line of the Northeast 1/4 of said Section 31, a distance of 329.98 feet to the Centerline of the East 21st Avenue Right-of-Way (R.O.W.) extended;

Thence N89°29'08"E along said Centerline of East 21st Avenue a distance of 662.42 feet to the West Line extended of a Parcel of Land described in a Warranty Deed recorded at Reception No. 2011000036454 in said Adams County;

Thence S00°26'46"E along the West Line extended of said Parcel of a Land, a distance of 330.82 feet to a point on the South Line of said Northeast 1/4 of Section 31;

Thence S89°33'31"W along said South Line a distance of 662.42 feet to the **Point of Beginning**.

Parcel Contains (218,864 Square Feet) 5.0244 Acres, more or less.

All lineal distances are represented in U.S. Survey Feet.

Bearings are based on the West Line of the Northeast 1/4 of Section 31, Township 3 South, Range 66 West of the 6th Principal Meridian having a Grid Bearing of N00°26'46"W based on NAD 83/2011 Colorado State Plane Central Zone and monumented by a badly marred 3" brass cap, 0.75' below grade in range box (water box), stamped "Sec 31, 1/4, 3S R66, LS 13327" found at the Center 1/4 Corner of said Section 31 and by a 3" brass cap, 0.45' below grade in asphalt, stamped "City of Aurora, T3S, 1/4, 30|31, R66W, LS 13327" found at the North 1/4 Corner of said Section 31, with all bearing contained herein being relative thereto.

Date Prepared: July 6, 2023

Date of Last Revision:

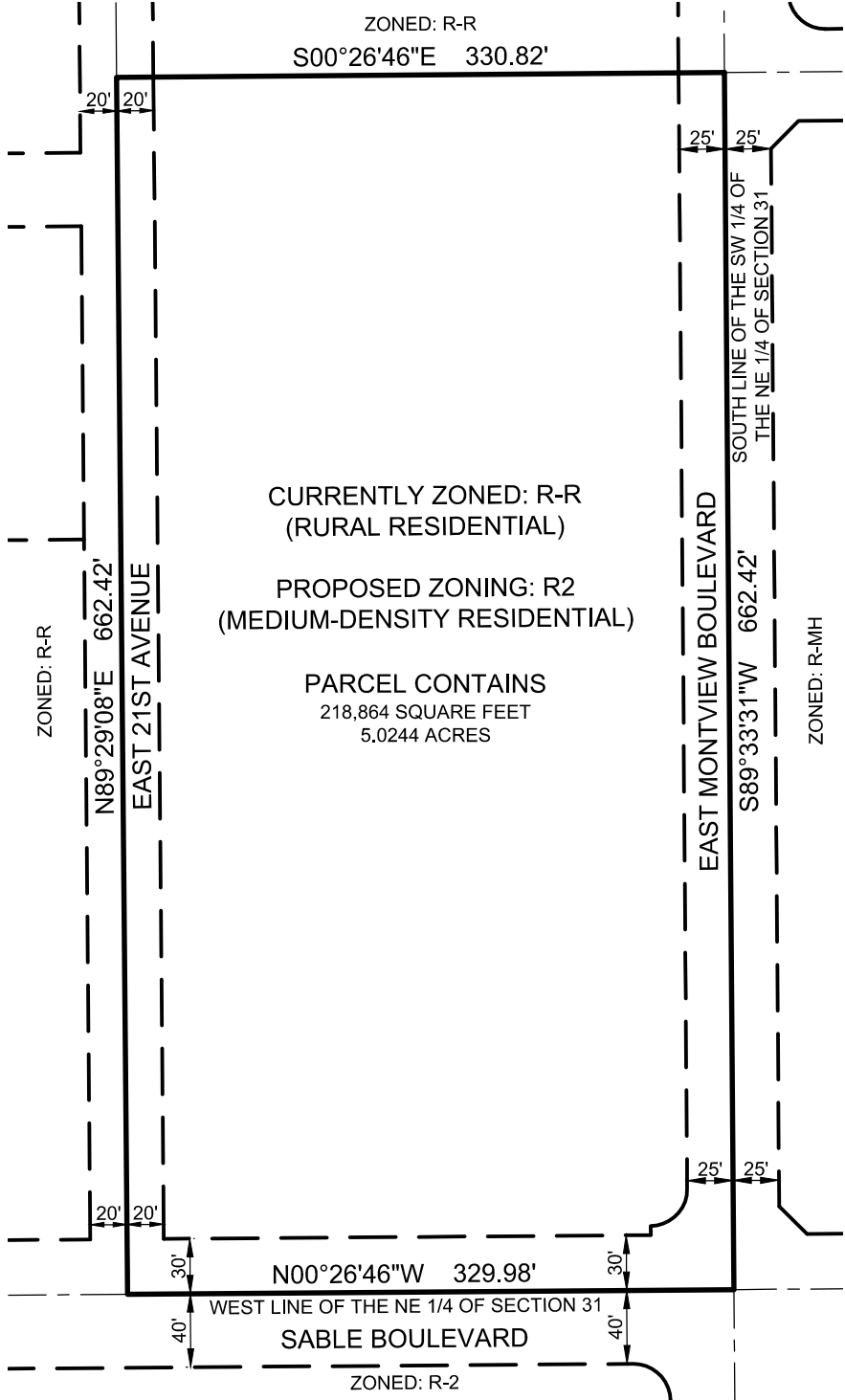
Prepared By: Charles N. Beckstrom,

Colorado PLS No. 33202

For and on behalf of

Engineering Service Company

# REZONE EXHIBIT



**ESC**  
**ENGINEERING**  
**SERVICE**  
**COMPANY**

14190 East Evans Avenue  
Aurora, Colorado 80014  
P 303.337.1393 | F 303.337.7481



## CITY OF AURORA

Drawn By: <i>JDP</i>	Checked By: <i>JDP</i>	Project No.: 1641.1	Date: 9/27/2023
Scale: 1" = 100'	File Name: <i>N:\Projects\Utah Dev Grp (Diaz)\Aurora - Sable &amp; Montview\CAD\Exhibits\ReZone\Sable &amp; Montview Aurora - ReZone.dwg</i>		

Note: This illustration does not represent a monumented survey. It is intended only to depict the attached description.

## REZONE EXHIBIT

BEING A PART OF TRACT 27 AND 28, ALTURA FARMS TRACT TWO  
SITUATED IN THE NE 1/4 OF SECTION 31, T.3S., R.66W. OF THE 6TH P.M.  
CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Lead Service Line Ordinance
<b>Item Initiator:</b> Todd Brewer, Deputy Director of Water Quality and Treatment, Aurora Water
<b>Staff Source/Legal Source:</b> Earl Wilkinson, Assistant General Manager of Operations, Aurora Water / Ian Best, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

### COUNCIL MEETING DATES:

**Study Session:** 12/11/2023

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADDING SECTION 138-229 OF THE AURORA CITY CODE PERTAINING TO LEAD AND GALVANIZED SERVICE LINE REPLACEMENT  
 Earl Wilkinson, Assistant General Manager of Operations, Aurora Water / Ian Best, Assistant City Attorney  
 Estimated time: 15 mins

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session  Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting  Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A



**Policy Committee Date:** N/A

**Action Taken/Follow-up: (Check all that apply)**

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

**HISTORY** (Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)

N/A

**ITEM SUMMARY** (Brief description of item, discussion, key points, recommendations, etc.)

Introduction of an Ordinance that will require all property owners serviced by a lead or galvanized service lines to replace such service lines through either the Lead Service Line Replacement Program established by Aurora Water (at no cost to the property owner) or replace the lead or galvanized service line at their own expense. This will continue to ensure the health, safety, and welfare of all Aurora residents.

**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact
- Budgeted Expenditure Impact
- Non-Budgeted Expenditure Impact
- Workload Impact
- No Fiscal Impact

**REVENUE IMPACT**

Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)

N/A

**BUDGETED EXPENDITURE IMPACT**

Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)

N/A

**WORKLOAD IMPACT**

Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)

N/A

**QUESTIONS FOR COUNCIL**

Does Council support moving the APPROVAL OF AN ORDINANCE adding section 138-229 of the Aurora City Code pertaining to Lead and Galvanized Service Line Replacement forward to the December 18, 2023, Council Meeting?

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**LEGAL COMMENTS**

Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of ordinances. (Section 5-1, Aurora City Charter). The City Council, as governing body of the city, shall have the power to make ordinances as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city and the inhabitants thereof. (Section 2-32, City Code). (Best)

ORDINANCE NO. 2023- \_\_\_\_\_

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADDING SECTION 138-229 OF THE AURORA CITY CODE PERTAINING TO LEAD AND GALVANIZED SERVICE LINE REPLACEMENT

WHEREAS, the City of Aurora, acting by and through its Utility Enterprise (“Aurora Water”) owns and operates its water system to provide Aurora’s residents with a safe, reliable, and clean source of water; and

WHEREAS, within the City of Aurora there are private properties currently serviced by lead and galvanized service lines owned by the property owner but connected to Aurora Water’s system; and

WHEREAS, the exposure to lead in drinking water is a public health issue of paramount importance and its adverse effects on children and the general population are serious and well known and lead service lines are the primary source of lead in drinking water; and

WHEREAS, the United States Environmental Protection Agency has promulgated the Lead and Copper Rule and subsequently finalized the Lead and Copper Rule Revisions (“LCRR”) to strengthen its protections against lead in drinking water (40 C.F.R. §§ 140 and 141); and

WHEREAS, the LCRR now requires public water systems such as Aurora Water to identify and replace lead and galvanized service lines with such inventory to be completed no later than October 16, 2024 (40 C.F.R. § 141.84); and

WHEREAS, the Colorado Department of Health and the Environment has updated the Colorado Primary Drinking Water Regulation to require water systems such as Aurora Water to complete a lead service line inventory and replacement plan no later than October 16, 2024 (5 C.C.R. 1002-11, §11(17)(2)(a)); and

WHEREAS, Aurora Water’s primary purpose to provide clean, safe drinking water to its residents which is an essential public benefit to the City as a whole, and any benefit to private landowners in accomplishing this purpose is incidental and subordinate to the primary public and governmental purpose; and

WHEREAS, in furtherance of this essential public purpose to protect Aurora residents from the potential dangers of lead and to comply with both the LCRR and the Colorado Primary Drinking Water Regulation, Aurora Water has created a program to replace lead and galvanized

service lines on private property at no charge to the property owner (“Lead Service Line Replacement Program”); and

WHEREAS, C.R.S. §§ 31-15-103, 31-15-401(b) and Aurora City Code § 2-32 grant municipalities and the Aurora City Council the power to make and establish ordinances not inconsistent with the laws of the state of Colorado which the Council shall deem necessary and proper to provide for the safety, preserve the health, and promote the prosperity of its inhabitants; and

WHEREAS, for the health, safety, and welfare of all Aurora residents, Aurora Water seeks to require all property owners serviced by a lead or galvanized service lines to replace such service lines through either the Lead Service Line Replacement Program established by Aurora Water (at no cost to the property owner), or replace the lead or galvanized service line at their own expense; and due to the hazard that lead poses to the health and safety of all residents seeks access to Aurora properties for the purpose of inspecting and replacing lead and galvanized service lines.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

**Section 1.** The City Code of the City of Aurora, Colorado, is hereby amended by adding a section, to be numbered 138-229 which section reads as follows:

**Sec. 138-229** – Mandatory Replacement of Lead and Galvanized Service Lines.

(1) Definitions. As used in this Section 138-229 the following words and phrases shall have the meanings ascribed to them below:

*Building* shall mean any structure having a roof supported by columns or walls, and built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

*Contractor* shall mean a qualified, licensed, bonded, and insured vendor that contracts with Aurora Water to replace service lines; or as context requires, a qualified, licensed, bonded, and insured plumber that contracts with an owner to replace a lead or galvanized service line.

*Dwelling* shall mean a building or structure or part thereof containing one or more dwelling units. This section shall also apply to buildings and structures that are not used for residential purposes.

*Dwelling Unit* shall mean any room or group of rooms, or any part thereof located with a building and forming a single habitable unit with facilities which are used or designed to be used for living, sleeping, cooking, eating, or bathing.

*Galvanized Service Line* shall mean an iron or steel service line that has been dipped in zinc to prevent corrosion and rusting.

*Lead Service Line* shall mean a service line known to consist of lead or any portion of lead.

*Lead Status Unknown* means a service line consisting of at least a portion of unknown material that may contain lead or galvanized materials. Aurora Water will treat lead status unknown service lines as lead service lines for purposes of this Section 138-229.

*Occupant or Tenant* shall mean a person or persons in actual possession of and living in the building or dwelling unit.

*Owner* shall mean any person who has legal title to any dwelling, building or structure, with or without accompanying actual possession thereof; or, who has equitable title and is either in actual possession or collects rents therefrom or who is executor, executrix, trustee, guardian, or receiver of the estate of the owner, or as mortgagee or as vendee in possession either by virtue of a court order or by agreement or voluntary surrender of the premises by the person holding the legal title, or as collector of rents has charge, care or control of any dwelling, building, structure, or rooming house.

*Property* shall mean any dwelling, dwelling unit, building, or structure receiving water service from Aurora Water.

*Service Line* shall mean the water line that connects to the dwelling, structure or building that is connected to the main Aurora Water line. The service line is comprised of two parts: (1) the portion owned by Aurora Water from the main to and including the meter pit; and (2) the portion owned by the private property owner from the meter pit to the connection with the inlet of the dwelling, building or structure.

*Structure* shall mean anything constructed or erected, the use of which requires fixed location on the ground or attachment to something having a fixed location on the ground.

(2) Prohibition. Lead and galvanized service lines serving any property within the City of Aurora are prohibited and any existing lead or galvanized service line must be replaced in accordance with this Section 138-229.

(3) Exclusion. A property owner may be excluded from the mandatory replacement of any lead or galvanized service line by providing Aurora Water with written proof from a contractor that a lead or galvanized service line does not serve the property and/or that any lead or galvanized service line was previously removed and replaced. Aurora Water

shall retain the ability to access the property as set forth in Section 138-229(4) to verify that no lead or galvanized service line serves the property.

(4) Service Line Testing.

(a) Aurora Water is authorized to access property in such areas as it deems necessary and appropriate to identify lead and/or galvanized service lines through pot-holing or other appropriate testing techniques. Aurora Water (or its contractor) must provide notice to owners and occupants no less than seventy-two (72) hours before accessing property to perform such tests. Aurora Water (and its contractors) must utilize commercially reasonable efforts to return the property to its prior condition after completing such tests. Aurora Water will notify owners of the status of the service line after completion of such tests.

(5) Service Line Replacement. The owner of any property connected to Aurora Water's system through a lead or galvanized service line, as may be identified by Aurora Water's records, service line testing, or any other reliable method, must replace such lead or galvanized service line through either of the following two methods:

(a) Agreeing to participate in Aurora Water's "Lead Service Line Replacement Program" by the later of: one hundred and eighty (180) days after the effective date of this ordinance; or within ninety (90) days of receiving written notice from Aurora Water of the existence of a lead or galvanized service line. Participation in the Lead Service Line Program will allow Aurora Water to replace the lead or galvanized service line at no cost to the owner. Owners and occupants must allow Aurora Water (or its contractor) reasonable access to the property to conduct lead or galvanized service line replacement. Owners and occupants of properties participating in the Lead Service Line Replacement Program shall be contacted in writing by Aurora Water regarding the Lead Service Line Replacement Program. The owner shall retain full ownership and responsibility for the service line and will be responsible for all service line repair outside of the scope of the lead or galvanized service line replacement including any applicable warranty period; or

(b) Hiring a contractor to replace the lead or galvanized service line at the owner's own expense. If an owner selects this option, the lead or galvanized service line must be replaced by the later of: three hundred and sixty-five (365) days after the effective date of this ordinance; or within ninety (90) days of receiving written notice from Aurora Water of the existence of a lead or galvanized service line. Lead and galvanized service lines must be replaced in accordance with all applicable laws and City rules and regulations. An extension to remove the lead or galvanized service line may be granted only as set forth in Section 138-229(5)(b)(i). To comply with this Section (b) an owner must provide Aurora Water with written proof that the lead service line has been replaced. Proof must include at a minimum: (1) a permit issued by the City of Aurora to a licensed contractor authorized to do the work; (2) documentation that the work was completed; and (3) a City of Aurora inspection report verifying removal of the lead or galvanized service line.

(i) Extension. An extension may be granted for compliance with Section 138-229(5)(b) only when the owner can demonstrate to Aurora Water's satisfaction that the owner has made a good faith effort to comply with Section 138-229(5)(b).

(c) Failure to provide proof of either enrollment in the Lead Service Line Replacement Program, in accordance with Section 138-229(5)(a), or replacement of any lead or galvanized service line at the owner's own expense, in accordance with Section 138-229(5)(b), shall constitute a violation of City Code.

(6) Authorization to Access Property.

(a) If an owner does not comply with Section 138-229(5) within three hundred sixty-five (365) days of the effective date of this ordinance (or within the time frame provided by a properly approved extension) or is inaccessible or otherwise denies access to the property to enable the replacement of a lead or galvanized service line, then the following procedures shall be followed:

(i) Aurora Water shall secure entrance to the property from the owner or current occupant of the dwelling, building or structure, and Aurora Water shall incur no liability from the owner. Aurora Water (or its contractor) will provide the owner or current occupant with a consent form prior to entry. The consent form will provide Aurora Water (or its contractor) with access to the property to verify, and replace, if necessary, any lead or galvanized service line. Aurora Water (or its contractor) shall use commercially reasonable efforts to restore the property to its prior condition after completing lead or galvanized service line replacement; and

(ii) If access is provided by an occupant of the dwelling, then the occupant shall be held harmless and no liability shall incur to Aurora Water or occupant due to the inspection or replacement of the lead or galvanized service line; and

(iii) If access is denied by the current occupant or owner, Aurora Water may commence procedures, including filing a court action in a court of competent jurisdiction, to conduct inspection and/or replacement of any lead or galvanized service line. Each day access is denied shall constitute a violation of City Code.

(7) Proof of Lead or Galvanized Service Line Replacement Upon Creation of New Water Account.

(a) If Aurora Water's records indicate any property is serviced by a lead or galvanized service line, Aurora Water may require proof that the lead or galvanized service line has been replaced or the property is enrolled in the Lead Service Line Replacement Program before creating or modifying any account for the property.

(8) Proof of Lead or Galvanized Service Line Replacement Upon Transfer of Ownership.

(a) Upon the sale or transfer of ownership of any dwelling, building or structure, and prior to the creation of any new Aurora Water account related to the property,

the owner must provide proof to Aurora Water that any lead or galvanized service line has been replaced or the property is enrolled in the Lead Service Line Replacement Program.

(9) Rules and Regulations. The General Manager is empowered to promulgate such rules and regulations regarding the Lead Service Line Replacement Program consistent with this Section as may be reasonably necessary to aid in the administration and enforcement of this Section.

(10) Non-compliance with Section 138-229 shall constitute a violation of City Code.

(11) Penalty. The penalty for violations of this Section 138-229 by any owner, person, or corporation shall be in accordance with the fines set forth in Section 1-13. The potential jail sentence shall not be applicable for violations of this Section 138-229. Each day a violation continues shall constitute a separate violation.

Section 2. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3. City employees violating the terms, directives, or mandates of this Code are not subject to the general penalty provision contained in Section 1-13 of the City Code.

Section 4. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 5. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

PASSED AND ORDERED PUBLISHED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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

ATTEST:

\_\_\_\_\_



KADEE RODRIGUEZ, City Clerk

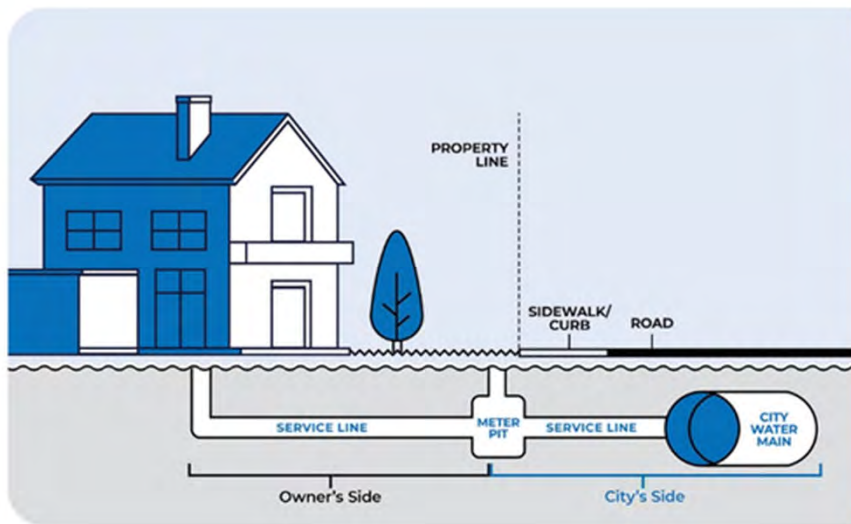
APPROVED AS TO FORM:

*Ian J Best*

RLA

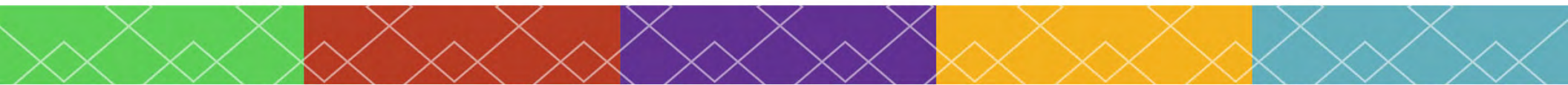
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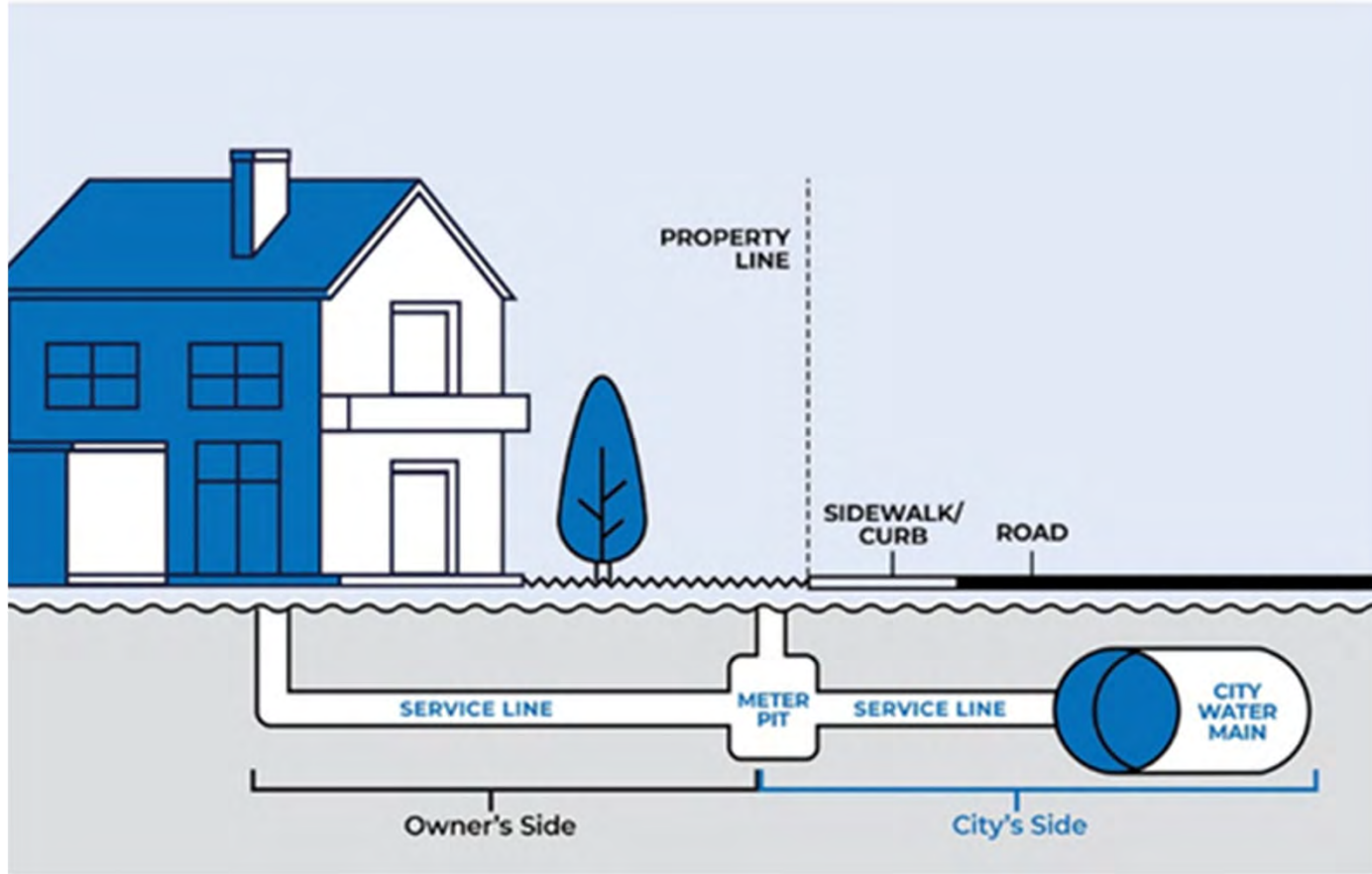
IAN BEST, Assistant City Attorney



# Lead Service Line Replacement Program

December 11, 2023  
City Council Study Session





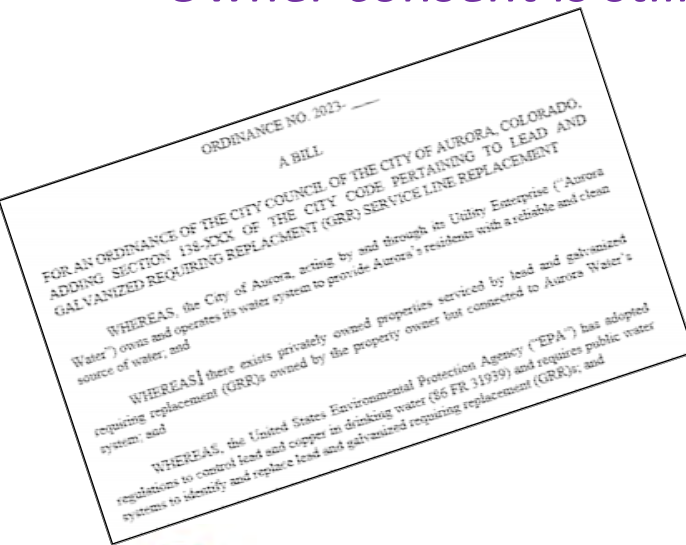
# Purpose/Request

- The purpose of today's discussion is to request Council consideration of DRAFT Ordinance language that will establish a Mandatory Lead Service Line Replacement (LSLR) Program in Aurora.
- Resent regulations require removal of lead and galvanized lines within our system.



# Why an Ordinance?

An ordinance would move the LSLR program from Voluntary to Mandatory.  
*Owner consent is still the preferred choice.*



- An ordinance may provide authority if owner declines consent. The ordinance could allow AW to access private property to protect public health.
- Voluntary programs have been *unsuccessful in achieving 100% compliance*.
- AW attempted a voluntary program in 2018, and it was not successful.
- Several programs started as voluntary and converted to mandatory including *Newark, Pittsburgh, DC Water, Detroit, and several towns in New Jersey* to expedite their LSLR participation and schedules.

# Mandatory Replacement Approach

Customers would be required to have their LSL replaced either by the utility or on their own within an established timeframe.

*“If AW’s goal is to remove all LSLs and GRRs, a mandatory approach is strongly recommended.”*

- Increased efficiency/lower replacement costs
- Allows for pre-planning block-by-block
- Higher participation rate (>90%)
- Shift from an income qualified approach replacements to we will pay for all replacements in the LSLR program
- Most likely to receive grant or principal forgiveness for work in disadvantaged communities
- More overall replacements



# Recommended Options for a Mandated Approach or Ordinance

- **Option 1 –All lead service lines are illegal:** The ordinance establishes that lead and galvanized requiring replacement drinking water service lines are illegal in the City of Aurora and that they must be replaced by a particular date or schedule.
- **Option 2 –Mandatory participation in LSLR Program:** Ordinance to define that the property owner must participate in AW’s lead service line replacement program or may only receive a waiver if they replace their service line through other means.



# Summary

- AW Staff working to complete service line inventory and conduct replacement work in coordination with other COA projects
- Many voluntary programs across country have switched to mandatory (ordinance) approach, with several key advantages
- Recommended Option on Mandated Approach is to declare lead service lines (and GRR) illegal, but provide flexibility in means of replacement





# Questions/Discussion?





# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Reappointment of Aurora Municipal Court Judges
<b>Item Initiator:</b> Shawn Day, Presiding Judge, Aurora Municipal Court
<b>Staff Source/Legal Source:</b> Shawn Day, Presiding Judge, Aurora Municipal Court / Angela Garcia, Senior Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 1.5--Maintain an unbiased, independent municipal court

### COUNCIL MEETING DATES:

**Study Session:** N/A

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

Reappointment of Aurora Municipal Court Judges

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- Approve Item and Move Forward to Study Session
- Approve Item as Proposed at Study Session
- Approve Item and Move Forward to Regular Meeting
- Approve Item as Proposed at Regular Meeting
- Information Only
- Approve Item with Waiver of Reconsideration  
*Reason for waiver is described in the Item Details field above.*

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

### Action Taken/Follow-up: *(Check all that apply)*

- Recommends Approval
- Does Not Recommend Approval
- Forwarded Without Recommendation
- Minutes Not Available
- Minutes Attached

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

N/A

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

The following are requesting reappointment as Relief Judges for the Aurora Municipal Court bench:

- Relief Judge Katie Allison
- Relief Judge Vicki Pace Cirbo
- Relief Judge Charles Peters

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact       Budgeted Expenditure Impact       Non-Budgeted Expenditure Impact  
 Workload Impact       No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

N/A

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

N/A

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

N/A

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

N/A

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**QUESTIONS FOR COUNCIL**

Does Council approve the reappointment of three current Relief Judges for the Aurora Municipal Court bench?

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**LEGAL COMMENTS**

The City Council retains the sole discretion to appoint, reappoint, or remove municipal court judges. (City Code, Sec. 50-72(d)). (Garcia)

# MEMORANDUM

## Aurora Municipal Court Office of the Presiding Judge



14999 E. Alameda Parkway  
Aurora, CO 80012

Phone 303-739-6535  
FAX 303-739-6532

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To: Honorable Mayor Mike Coffman; Mayor Pro-Tem Curtis Gardner; Council Member Crystal Murillo; Council Member Steve Sundberg; Council Member Ruben Medina; Council Member Juan Marcano; Council Member Alison Coombs; Council Member Franciose Bergan; Council Member Angela Lawson; Council Member Danielle Jurinsky; Council Member Dustin Zvonek

From: Shawn Day, Presiding Judge

Date: September 29, 2023

Subject: Request for Judicial Reappointments of Three Current Relief Judges

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Greetings Mayor, Mayor Pro Tem and Members of City Council,

As required by Aurora City Code 50-72(b), I am writing to inform you that the following Relief Judges are requesting reappointment to our bench:

*Relief Judge (2 Year Terms):*

Relief Judge Katie Allison  
Relief Judge Vicki Pace Cirbo  
Relief Judge Charles Peters

The above listed Relief Judges' current terms will expire on December 31, 2023.

I am respectfully requesting the reappointment of the above Relief Judges and that your consideration and formal vote of the reappointments be added to the Regular City Council meeting agenda either December 4, 2023 or December 18, 2023.

Please let me know if you have any questions or concerns about the reappointment request.

Thank you for your consideration.

Respectfully,

  
Shawn Day  
Presiding Judge



# CITY OF AURORA

## Council Agenda Commentary

<b>Item Title:</b> Consideration to Adopt the 2024 Council Meeting Calendar
<b>Item Initiator:</b> Kadee Rodriguez, City Clerk
<b>Staff Source/Legal Source:</b> Kadee Rodriguez, City Clerk / Andrea Wood, Assistant City Attorney
<b>Outside Speaker:</b> N/A
<b>Council Goal:</b> 2012: 2.1--Work with appointed and elected representatives to ensure Aurora's interests

### COUNCIL MEETING DATES:

**Study Session:** 12/11/2023

**Regular Meeting:** 12/18/2023

**2<sup>nd</sup> Regular Meeting (if applicable):** N/A

**Item requires a Public Hearing:**  Yes  No

### ITEM DETAILS *(Click in highlighted area below bullet point list to enter applicable information.)*

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated time (For Study Session items only, indicate combined time needed for presentation and discussion)

Kadee Rodriguez, City Clerk / Andrea Wood, Assistant City Attorney

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

- |  |  |
|--|--|
| <input type="checkbox"/> Approve Item and Move Forward to Study Session              | <input type="checkbox"/> Approve Item as Proposed at Study Session   |
| <input checked="" type="checkbox"/> Approve Item and Move Forward to Regular Meeting | <input type="checkbox"/> Approve Item as Proposed at Regular Meeting |
| <input type="checkbox"/> Information Only  |  |
| <input type="checkbox"/> Approve Item with Waiver of Reconsideration                 |  |

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

### Action Taken/Follow-up: *(Check all that apply)*

- |   |  |
|---|--|
| <input type="checkbox"/> Recommends Approval              | <input type="checkbox"/> Does Not Recommend Approval |
| <input type="checkbox"/> Forwarded Without Recommendation | <input type="checkbox"/> Minutes Not Available       |
| <input type="checkbox"/> Minutes Attached                 |  |

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**HISTORY** *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

The Council Meeting Calendar is adopted during the last meeting of the calendar year, unless otherwise determined at a prior meeting. Once defined, changes to the calendar can only occur under the Special Meeting Rules set forth in Section A(2) of the Council Rules or with a 2/3 vote of the City Council.

- Council Meetings - In the Council Chambers of the Aurora Municipal Center on designated Mondays at 6:30 p.m., and on such other days and at such other times specified in the adopted Council Meeting Calendar.
- Study Sessions - On designated Mondays and on such other days and at such other times as may be chosen by City Council.
- Workshops - Council workshops are generally held three times each year.

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**ITEM SUMMARY** *(Brief description of item, discussion, key points, recommendations, etc.)*

This is the proposed 2024 Council Meeting Calendar.

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**FISCAL IMPACT**

Select all that apply. (If no fiscal impact, click that box and skip to "Questions for Council")

- Revenue Impact       Budgeted Expenditure Impact       Non-Budgeted Expenditure Impact  
 Workload Impact       No Fiscal Impact

**REVENUE IMPACT**

*Provide the revenue impact or N/A if no impact. (What is the estimated impact on revenue? What funds would be impacted? Provide additional detail as necessary.)*

**BUDGETED EXPENDITURE IMPACT**

*Provide the budgeted expenditure impact or N/A if no impact. (List Org/Account # and fund. What is the amount of budget to be used? Does this shift existing budget away from existing programs/services? Provide additional detail as necessary.)*

**NON-BUDGETED EXPENDITURE IMPACT**

*Provide the non-budgeted expenditure impact or N/A if no impact. (Provide information on non-budgeted costs. Include Personal Services, Supplies and Services, Interfund Charges, and Capital needs. Provide additional detail as necessary.)*

**WORKLOAD IMPACT**

*Provide the workload impact or N/A if no impact. (Will more staff be needed or is the change absorbable? If new FTE(s) are needed, provide numbers and types of positions, and a duty summary. Provide additional detail as necessary.)*

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**QUESTIONS FOR COUNCIL**

Does Council wish to adopt the proposed 2024 Council Meeting Calendar?

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**LEGAL COMMENTS**

Article 3-8 of the City Charter mandates council shall meet regularly at the city hall at least twice each month at a time to be fixed by the rules of procedure of each council. Rule A.1. of the Rules of Order and Procedure for the Aurora, Colorado, City Council directs that the meetings shall be held on designated Mondays at 6:30 PM and at

such other dates and times as may be chosen by city council at the last meeting of the calendar year, unless otherwise determined at a prior meeting. (Wood)

## 2024 Aurora City Council Meeting Calendar

January	February	March	April
1 No meeting - Holiday	<b>3 Winter Workshop</b>	4 No meeting	1 No meeting
<b>8 Council Meeting</b>	5 No meeting	<b>11 Council Meeting</b>	<b>8 Council Meeting</b>
15 No meeting - Holiday	<b>12 Council Meeting</b>	18 No meeting	15 No meeting
<b>22 Council Meeting</b>	19 No meeting - Holiday	<b>25 Council Meeting</b>	<b>22 Council Meeting</b>
29 No meeting	<b>26 Council Meeting</b>		<b>27 Spring Workshop</b>
			29 No meeting
1 New Year's Day (offices closed)	19 Presidents Day (offices closed)	11-15 Aurora Public Schools spring break	22-30 Passover
15 MLK Jr. Day (offices closed)		18-22 Cherry Creek Schools spring break	
31 State of the Base		11-13 NLC Conference (Washington)	
17-19 US Conf of Mayors Winter Meeting (Washington)		31 Easter	
May	June	July	August
<b>6 Council Meeting</b>	3 No meeting	1 No meeting	5 No meeting
13 No meeting	<b>10 Council Meeting</b>	<b>8 Council Meeting</b>	<b>12 Council Meeting</b>
<b>20 Council Meeting</b>	17 No meeting	15 No meeting	19 No meeting
27 No meeting - Holiday	<b>24 Council Meeting</b>	<b>22 Council Meeting</b>	<b>26 Council Meeting</b>
		29 No meeting	
1-3 Accelerate CO (Washington)	19 Juneteenth (offices closed)	4 Independence Day (offices closed)	GlobalFest
20-21 ICSC Conference	18-21 CML Conference (Loveland)		
27 Memorial Day (offices closed)	20-23 US Conf of Mayors (Kansas City)		
September	October	November	December
2 No meeting - Holiday	7 No meeting	<b>4 Council Meeting</b>	<b>2 Council Meeting</b>
<b>9 Council Meeting</b>	<b>14 Council Meeting</b>	11 No meeting - Holiday	9 No meeting
16 No meeting	21 No meeting	<b>18 Council Meeting</b>	<b>16 Council Meeting</b>
<b>17 SSS: Budget Presentations</b>	<b>28 Council Meeting</b>	25 No meeting	23 No meeting
<b>23 Council Meeting</b>			30 No meeting
<b>28 Fall Workshop (Budget)</b>	2-4 Rosh Hashanah		Holiday Tree Lighting
30 No meeting	11, 12 Yom Kippur	5 Election Day	ICSC Recon
	AEDC A-List Dinner	11 Veteran's Day (offices closed)	25 Hanukkah
2 Labor Day (offices closed)	31 Halloween	13-16 NLC City Summit (Tampa)	25 Christmas Day (offices closed)
22-25 ICMA Conference		28-29 Thanksgiving (offices closed)	31 New Years Eve

Council Meeting / Study Session (24)

Special Study Session (1)

Workshop (3)