



NOTICE OF COUNCIL MEETING

TELECONFERENCE/ELECTRONIC PARTICIPATION PROCEDURES

Members of the Aurora City Council will participate in the July 20, 2020 Executive Session, AURA Meeting, Study Session and Council Meeting by teleconference due to concerns surrounding the COVID-19 (coronavirus) outbreak. To keep the members of our community, employees and leaders safe, there will be no public presence at the meeting. Members of the public and media will be able to participate remotely through the options listed below:

Where to view/listen:

The meeting will be live-streamed at www.auroraTV.org, and on Cable Channels 8 and 880 in Aurora.

Those who cannot access the internet or cable TV may listen by phone by using the following call-in information:

Dial Access Number 1-877-820-7831
Enter Participant Passcode: 254610#

How to comment:

You may submit comments for Public Invited to be Heard, or for a specific agenda item on the regular agenda, by voicemail or email. Comments are limited to three minutes. You may leave your comment by voicemail to be played at the meeting by calling:

(303) 739-7635

Or you may email your comment to: PublicComment@auroragov.org

Staff will read up to the first three minutes of your comments into the record. If the line is unavailable, or you have any problems, please send your comment to the email listed above.

Translation/Accessibility

The City will provide closed captioning services on Cable Channels 8 and 880. If you need any other accommodation, please contact the Office of the City Clerk 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 Monday, July 20, 2020 at 9:00 a.m. (Si necesita un intérprete, comuníquese con la oficina de asuntos internacionales e inmigrantes en 303-739-7521 por el viernes anterior a la reunión del lunes.)

For other information regarding public meetings, please contact the Office of the City Clerk at (303) 739-7094 or by email at CityClerk@auroragov.org, or visit www.auroragov.org.



AGENDA
City of Aurora, Colorado
MONDAY, July 20, 2020

REGULAR MEETING OF THE AURORA CITY COUNCIL
(Open to the Public)
TELECONFERENCE
5:00 p.m.

CALL TO ORDER: Mayor, Mike Coffman

ROLL CALL: Stephen Ruger, City Clerk

ANNOUNCEMENT OF PROPOSED EXECUTIVE SESSION TOPICS: Stephen Ruger, City Clerk for Mayor, Mike Coffman

(Matters subject to consideration in Executive Session per Section 24-6-402(4) C.R.S.)

CONSIDERATION TO RECESS FOR EXECUTIVE SESSION:

STUDY SESSION
(Open to the Public)
TELECONFERENCE
5:00 p.m. – 7:10 p.m.

REGULAR MEETING OF THE AURORA CITY COUNCIL
(Open to the Public)
Reconvene at 7:30 p.m. - TELECONFERENCE

AGENDA
***REVISED**
City Council Study Session
(1st Floor Aurora Room)
Monday, July 20, 2020
5:00 p.m.

1. ITEMS FROM THE MAYOR

- a. Executive Session Update
- b. Mayor's Update
- c. Issue Update

2. CONSENT CALENDAR

- a. Sand Creek Metro District Service Plan Amendment - Management and Finance Policy Committee (5/5)
Presenter: Vinessa Irvin, Manager of Development Assist/Brian Rulla, Assistant City Attorney I Civil
- b. King Ranch Metropolitan District Nos 1-5 – Management and Finance Policy Committee (5/5)
Presenter: Vinessa Irvin, Manager of Development Assist/Brian Rulla, Assistant City Attorney I Civil

3. ITEMS FROM THE POLICY COMMITTEES

- a. Proposed Changes to Metro District Model Service Plan – Management and Finance Policy Committee (5/15)
Presenter: Vinessa Irvin, Manager of Development Assist/Brian Rulla, Assistant City Attorney I Civil
- b. Gold Star Memorial Monument – Parks, Foundations, Quality of Life Policy Committee (10/15)
Presenter: Tracy Young, Manager, PROS PD&C/Garcia, Angela, Assistant City Attorney II Civil
- c. US Space Force to Municipal Code – Public Relations, Communications, Tourism, Libraries, B&C, and Citizen Groups Policy Committee (5/5)
Presenter: Claudine McDonald, Community Relations/David Lathers, Senior Asst City Attorney
- d. Recap of the 2020 State Legislative Session – Federal, State and Intergovernmental Relations Policy Committee (5/5)
Presenter: Luke Palmisano, Intergovernmental Relations Manager/Daniel Brotzman, City Attorney
- e. CU Fire and Life Safety MOU – Planning and Economic Development Policy Committee (5/10)
Presenter: Mike Dean, Fire/Life Safety Manager & Liaison/Isabelle Evans, Assistant City Attorney II Civil

4. ITEMS FROM THE MANAGER

- a. Xcel Energy Partners in Energy Program (5/10)
Presenter: Karen Hancock, Principal Planner/Daniel Money, Senior Asst City Attorney
Outside Speaker: Tom Henley, Xcel Energy

- b. Mineral Lease to GMT Exploration (5/10)
Presenter: Hector Reynoso, Manager Real Property Services/Ian Best, Assistant City Attorney I
- *c. Discussion of an Independent Investigation into the Death of Elijah McClain
Presenter: Jim Twombly, City Manager/Dan Brotzman, City Attorney/Jason Batchelor, Deputy City Manager

5. ITEMS FROM THE CITY COUNCIL

- a. Public Information Protocol (30)
Sponsor: Mayor Pro Tem Johnston
- b. Public Comment Rules (20)
Sponsor: Mayor Pro Tem Johnston
- c. Colorado Municipal League (CML)/National League of Cities (NLC)-Council Member Lawson
- d. Legislative Update – Council Member Lawson
- e. Denver Regional Council of Governments (DRCOG) – Mayor Coffman
- f. Fitzsimons Redevelopment Authority (FRA) Update – Coffman/Berzins/Hiltz
- g. E-470 Update – Council Member Bergan
- h. Aurora Economic Development Council (AEDC) Update – Council Member Berzins
- i. Accelerate Colorado – Council Member Berzins
- j. Visit Aurora – Council Member Coombs
- k. Aurora Sister Cities – Council Member Marcano
- l. Reimagine RTD – Council Member Lawson

CALL-UPS OF COUNCIL POLICY COMMITTEE ITEMS

MISCELLANEOUS ITEMS

ITEMS REMOVED FROM THE AGENDA, IF ANY

POLICY COMMITTEE MINUTES

AGENDA

Regular Meeting of the Aurora City Council City Council Chambers Monday, July 20, 2020 7:30 p.m.

NOTE: Interested citizens wishing to address City Council should complete a SPEAKER SLIP and present it to the City Clerk stationed near the Council dais. Speaker Slips are located on the table by the Council Chambers entrance. Speakers on items not related to the agenda are allowed three minutes to speak. Council does not engage in discussion during this time.

1. **RECONVENE REGULAR MEETING OF JULY 20, 2020 AND CALL TO ORDER**
2. **ROLL CALL** Stephen Ruger, City Clerk
3. **INVOCATION/MOMENT OF SILENCE FOR 7/20**
4. **PLEDGE OF ALLEGIANCE TO THE FLAG** (all standing)
5. **APPROVAL OF THE MINUTES**
6. **CEREMONY**
7. **PUBLIC INVITED TO BE HEARD (non-agenda related issues only)**
8. **ADOPTION OF THE AGENDA**
9. **CONSENT CALENDAR**

General Business

- a. Consideration to AWARD A SOLE SOURCE PROFESSIONAL SERVICES AGREEMENT with Brothers Redevelopment, Inc. (BRI) for services to support the City of Aurora Community Development Minor Home Repair Program in providing financial and technical assistance to low- and moderate-income Aurora, Colorado homeowners needing essential home repairs not-to-exceed \$250,000 for this program.
Presenter: Jessica Prosser, Manager of Community Development, Housing and Community Services/Joyce, Tim, Assistant City Attorney II Civil
- b. Consideration to AWARD A SINGLE SOURCE CONTRACT to Carollo Engineers, Inc., Littleton, CO in the amount of \$4,208,093.00 for design-build services for the Sand Creek Water Reuse Facility Programmable Logic Controls Conversion and Improvements Project (Phase 2 of 2).
Presenter: Elizabeth Carter, Principal Engineer, Aurora Water/David Lathers, Senior Asst City Attorney
- c. Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Wilson & Company, Inc., Denver, Colorado in the amount of \$128,227.00 for providing Engineering Services for Storm CMP Rehabilitation Task 6, Project No. R-2041.
Presenter: Swirvine Nyirenda, Principal Engineer, Aurora Water/David Lathers, Senior Asst City Attorney
- d. Consideration to AWARD A SINGLE SOURCE CONTRACT to Keesen Landscape Management Inc., Englewood, Colorado in the not-to-exceed amount of \$210,000.00 for Weed Mowing and Trash Removal Services (Abatement Services) as required through December 31, 2020.
Presenter: Nancy Sheffield, Interim Director, Housing and Community Services/David Lathers, Senior Asst City Attorney

7/19/2020

- ◆ ***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.***

- e. Consideration to APPROVE THE PURCHASE of 119 share of stock in the Whitney Ditch Company from BCI Waterco LLC and an affiliated water pipeline easement from GWIP LLC, for \$26,881,719.75, by the City of Aurora, acting by and through its Utility Enterprise.
Presenter: Dawn Jewell, S Platte Basin Supv, Aurora Water/ Neitzel, Stephanie, Assistant City Attorney II Civil

10. **RESOLUTIONS**

- ◆ a. **R2020-64** Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving an Amendment to Intergovernmental Agreement No. 18-06.01B regarding funding the 22nd Avenue outfall to Westerly Creek Improvement Project between the City of Aurora, and the Urban Drainage and Flood Control District D/B/A mile High Flood District.
Presenter: Sarah Young, Deputy Director Wtr Plan/Engin, Aurora Water/ Ian Best, Assistant City Attorney I
- ◆ b. **R2020-65** Consideration to APPROVE A RESOLUTION by the City Council of the City of Aurora, Colorado for the Agreement Between the City of Aurora and the Colorado Department of Revenue, Division of Motor Vehicles, Regarding Commercial Driver License Testing.
Presenter: Renee Pettinato Mosley, Risk Manager, Human Resources/Gardner, Michelle, Senior Asst City Attorney
- ◆ c. **R2020-66** Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the Intergovernmental Agreement between the City of Aurora, Colorado, and the Counties of Adams and Arapahoe, Colorado, for the establishment of a Veteran's Service Office.
Presenter: Lucas "Luke" Palmisano, Intergovernmental Rltns Mgr, General Management/Hernandez Perez, Hans, Assistant City Attorney II Civil
- ◆ d. **R2020-67** Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, to Open an Independent Investigation into the Death of Elijah McClain
Presenter: Jason Batchelor, Deputy City Manager/Daniel Brotzman, City Attorney
- ◆ e. **R2020-68** Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, to renew the City Manager's Disaster Declaration
Presenter: James Twombly, City Manager/Isabelle Evans, Assistant City Attorney II

11. **ORDINANCES FOR INTRODUCTION**

- ◆ a. **2020-23** Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, authorizing the Imposition of Capital Impact Fees on residential development in the City as approved by the Uniform Development Ordinance.
Presenter: Terri Velasquez, Director of Finance, Finance/Hernandez Perez, Hans, Assistant City Attorney II Civil

12. **ORDINANCES FOR FINAL**

THE SPONSOR OF ITEM 12a WISHES TO POSTPONE IT UNTIL THE SECOND MEETING IN FEBRUARY 2021

7/19/2020

- ◆ *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.*

- ◆ a. **2020-09** Consideration of AN ORDINANCE FOR FINAL of the City Council of the City of Aurora, Colorado, amending Chapter 26 by creating a "Non-Sugary Default Beverage Option on Children's Menus" under Article IX of the City Code.
Sponsor: Council Member Lawson
Presenter: Trevor Vaughn, Manager of Tax and Licensing/Hernandez Perez, Hans, Assistant City Attorney II Civil
Outside Speakers: Naomi Amaha, American Heart Associations and Kathy Staats, Tri-County Health Department

13. **ANNEXATIONS**

- ◆ a. **R2020-69** Public Hearing and Consideration of A RESOLUTION of the City Council of the City of Aurora, Colorado, making certain findings of fact regarding the proposed annexation of a parcel of land located in the Northeast Quarter of Section 11, Township 4 South, Range 66 West of the Sixth Principal Meridian, Arapahoe County, Colorado. (Colorado Christian Fellowship Annexation 9.2 acres)
Presenter: Jacob Cox, Senior Dev Project Manager, General Management/Brian Rulla, Assistant City Attorney I Civil
- ◆ b. **2020-24** Public Hearing and Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, annexing a parcel of land located in the Northeast Quarter of Section 11, Township 4 South, Range 66 West of the Sixth Principal Meridian, Arapahoe County, Colorado. (Colorado Christian Fellowship Annexation 9.2 acres)
Presenter: Jacob Cox, Senior Dev Project Manager, General Management/Brian Rulla, Assistant City Attorney I Civil
- ◆ c. **2020-25** Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, finding and determining that certain real property located in an Unincorporated area of Arapahoe County is an enclave under applicable law; making certain other findings in accordance with the "Municipal Annexation Act of 1965"; and annexing certain parcels of land located in the East half of the East half of Section 8, Township 4 South, Range 65 West of the 6th principal meridian, County of Arapahoe, State of Colorado. (XCEL ADONEA) 25.651 ACRES.
Presenter: Jacob Cox, Senior Dev Project Manager, General Management/Brian Rulla, Assistant City Attorney I Civil

14. **RECONSIDERATIONS AND CALL-UPS**

- ◆ a. RECONSIDERATION OF RESOLUTION R2020-24 - to Suspend Certain Council Rules.
Staff Source: Stephen Ruger, City Clerk, General Management/Isabelle Evans, Assistant City Attorney II

15. **GENERAL BUSINESS**

- a. Consideration of the reappointment of five (5) youth members and the appointment of two (2) new youth members to the Aurora Youth Commission.
Presenter: Stephen Ruger, City Clerk, General Management/Lathers, David, Senior Asst City Attorney

16. **REPORTS**

- a. Report by the Mayor
- b. Reports by the Council

17. **PUBLIC INVITED TO BE HEARD**

18. **ADJOURNMENT**

7/19/2020

- ◆ *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 #: 9a
SS: _____
1st: _____
2nd: _____

Item Title:

Consideration to AWARD A SOLE SOURCE PROFESSIONAL SERVICES AGREEMENT with Brothers Redevelopment, Inc. (BRI) for services to support the City of Aurora Community Development Minor Home Repair Program in providing financial and technical assistance to low- and moderate-income Aurora, Colorado homeowners needing essential home repairs not-to-exceed \$250,000 for this program.

Item Initiator: Prosser, Jessica - Manager Of Community Developme - Housing and Community Services

Staff Source: Prosser, Jessica - Manager Of Community Developme - Housing and Community Services

City Manager/Deputy City Manager Signature: James Twombly

Outside Speaker:

Council Goal: 2012: 1.2--Develop neighborhood and community relationships

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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

Consideration to award a sole source professional services agreement with Brothers Redevelopment, Inc. (BRI) for services to support the City of Aurora Community Development Minor Home Repair Program in providing financial and technical assistance to low- and moderate income Aurora, Colorado homeowners needing essential home repairs not-to-exceed \$250,000 for the program.

BRI has partnered with local government agencies primarily utilizing United States Department of Housing and Urban Development (HUD) funds. BRI’s Home Modification and Repair department has become a key service provider for housing rehabilitation throughout both the Denver and Colorado Springs metropolitan areas. Since 1971, Brothers Redevelopment Inc. has become synonymous with affordable, safe and accessible housing solutions for Colorado’s low-income, elderly and disabled residents. This nonprofit organization has worked with countless supporters and tens of thousands of volunteers to provide a broad spectrum of housing-related services to numerous clients across the state. Brothers promotes, develops and preserves sustainable affordable housing. BRI is the sole service provider that has the established capabilities to assist Aurora homeowners through our programs. BRI will partner with the City to administer the Minor Home Repair Program as outlined in the Scope of Services in a manner satisfactory to the City and consistent with the standards required as a condition of

providing these funds. BRI's programs perform countless home assistance services, ranging from emergency repair, safety and accessibility modification, whole home rehabs and roof replacement and has provided CD with a fair and reasonable rate for services.

Based on the above, CD recommends awarding a sole source contract with Brothers Redevelopment, Inc. (BRI) for services to support the City of Aurora Community Development Minor Home Repair Program not to exceed \$250,000 for a 12 month period pursuant to City Code Section 2-674 (10) titled "Sole Source". This provision authorizes noncompetitive awards when only one specific source is known to exist for the required supplies or services (sole source).

QUESTIONS FOR Committee

Does Council approve the sole source professional services agreement with BRI in the amount not-to-exceed \$250,000?

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 source), and the Purchase Manager approves the use of the negotiation process to award. (City Code Sec. 2-674(10))

HUD grant recipients may use the funds to eliminate slums or blight; to meet other community development needs having a particular urgency because of existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available. 24 CFR § 570.200(2) (TJoyce)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

An amount not to exceed \$250,000 of Community Development Block Grant (CDBG) funds will be used for the purposes of paying for Brothers Redevelopment staff time and materials to rehabilitate homes. Funding for this agreement is included in the 2020 program budget.

ORG USED: Minor Home Rehabilitation

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

No private financial impact.

EXHIBITS ATTACHED:



**City of Aurora
COUNCIL AGENDA COMMENTARY**

Item #: 9b
 SS: _____
 1st: _____
 2nd: _____

Item Title: Consideration to AWARD A SINGLE SOURCE CONTRACT to Carollo Engineers, Inc., Littleton, CO in the amount of \$4,208,093.00 for design-build services for the Sand Creek Water Reuse Facility Programmable Logic Controls Conversion and Improvements Project (Phase 2 of 2).
Item Initiator: Jones, Nathan - SR Procurement Agent - Finance
Staff Source: Carter, Elizabeth - Principal Engineer - Aurora Water
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 3.4--Maintain a reliable water system

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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 the openly solicited contract to Carollo Engineers, Inc., for providing engineering services for the Sand Creek Water Reuse Facility Programmable Logic Controls Conversion and Improvements Project (Phase 1 of 2) in the amount of \$626,451.00 was reported to City Council on the Weekly Report of August 12, 2019 (R-1951).

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

Background

The Sand Creek Water Reuse Facility is a 5.5 million gallons per day reuse water treatment facility located in northwest Aurora (see attached map). Since commencing operations in 1964, the facility has undergone multiple capacity expansions and treatment process upgrades. Water for treatment is diverted from the Metro Wastewater Reclamation District’s Sand Creek Interceptor. Water treated at the facility is used to irrigate various sites within the City including golf courses, parks, and greenways.

Facility treatment processes primarily are monitored and controlled using Rockwell Automation’s Allen Bradley SLC control platform hardware and software. This platform has been designated as “silver series” by Rockwell Automation, which means all research and development (support) associated with the platform has been stopped. Additionally, some of the platform’s hardware components are no longer being manufactured. The components of the control system have reached the end of their useful life and need to be replaced.

The Sand Creek Water Reuse Facility Programmable Logic Controls Conversion and Improvements Project principally involves Programmable Logic Control (PLC) hardware acquisition and replacement,

creation of process control narratives, PLC programming and testing, design and installation of electrical/communication system improvements, and design and construction of a remodeled control room. The project is being delivered under a progressive design-build approach allowing the City and the design-builder (consultant/contractor team) to address challenges and complexities early in the project. Additionally, the project is being delivered in two (2) phases through which the design-builder selected for Phase 1 was eligible (based on successful completion of Phase 1 work) for a single source contract award to complete the remaining project work under Phase 2.

Under Phase 1, a design-builder (Carollo Engineers, Inc.) was selected through a competitive solicitation using a qualification-based selection approach to develop an understanding of the facility's design/operation, identify and evaluate various implementation alternatives to accomplish the project's scope of work, design the preferred alternative to 70 percent completion, and develop/negotiate a schedule and guaranteed maximum price for completion of the design and construction of the project. Under Phase 2, Aurora Water would like to award Carollo Engineers, Inc. a single source contract to complete the project design, develop all required programming, construct the Project, perform post-construction commissioning, and provide warranty support. Due to the large dollar value of this Phase II award, Aurora Water staff hired a third-party consultant, Kennedy Jenks, to ensure the price was fair and reasonable.

Proposed Award

Aurora Water is requesting approval of a Single Source contract award to Carollo Engineers, Inc., to provide design-build services to complete the design and construction of the project. The guaranteed maximum price submitted by Carollo Engineers, Inc., for completing all remaining project work was negotiated with Carollo Engineers, Inc, by staff, and subsequently independently evaluated by Kennedy Jenks. Both Aurora Water and Kennedy Jenks consider the guaranteed maximum price to be fair and reasonable.

Recommendation

Based on the above, staff recommends that the City award a Single Source contract award to Carollo Engineers, Inc., Littleton, CO in the amount of \$4,208,093.00 for design-build services in performing Phase 2 of the Sand Creek Water Reuse Facility Programmable Logic Controls Conversion and Improvements Project.

QUESTIONS FOR Committee

Does Council approve the Single Source contract award to Carollo Engineers, Inc., Littleton, CO in the amount of \$4,208,093 for design-build services in performing Phase 2 of the Sand Creek Water Reuse Facility Programmable Logic Controls Conversion and Improvements Project?

LEGAL COMMENTS

Purchase orders or contracts in any amount may be awarded without benefit of formal competitive bidding when closer location, more advantageous time allowances, or similar variable factors can reduce the total cost of the product or service (City Code § 2-674(6)). (Lathers).

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

Funding for this contract will be from the Capital Improvement Program, Wastewater Fund in the amount of \$4,208,093.00. A budget transfer from another project within the program will be completed to cover the overage.

ORG USED: Sandcreek Wtr Reuse Plant (52658)

PRIVATE FISCAL IMPACT *(If Significant or Nominal, EXPLAIN)*

Not Applicable Significant Nominal

Not Applicable.

EXHIBITS ATTACHED:

1. Weekly Report To Council August 12, 2019.pdf
2. MAP.pdf

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>CAROLLO ENGINEERS, INC.</p> <p>LITTLETON, CO</p> <p>Dept: Water</p>	<p>Award an openly solicited contract to Carollo Engineers, Inc. for Engineering Services for the Sand Creek Water Reuse Facility (Sand Creek WRF) Programmable Logic Controls Conversion and Improvements Project. The SCWRF currently operates with the Rockwell Automation SLC platform. This platform has been designated as “silver series”, which means all research and development (support) has been stopped and processors and I/O modules are no longer manufactured.</p> <p>The overall Project scope will be designed and constructed in two progressive phases. Under Phase 1, the selected team will perform a site investigation to develop an understanding of facility design/operation, identify and evaluate various project implementation alternatives to accomplish the Project’s scope of work, design the preferred alternative to 70 percent complete, and develop/negotiate a schedule and Guaranteed Maximum Price (GMP) and for completion of the design and construction of the Project (Phase 2 services).</p> <p>The Phase 1 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. Carollo Engineers, Inc. was selected as the top-ranked firm out of the four (4) firms that responded. A detailed scope of work, project schedule and price proposal in the not-to-exceed amount of \$626,451.00 were negotiated. The proposed hourly labor rates are the same as their MESA VI agreement. Based on the above, the price proposal for providing the proposed services is considered to be fair and reasonable.</p> <p>Under Phase 2, Carollo Engineers, Inc. will be awarded a contract to complete the Project design, fabricate new control panels, develop related/required programming, install/test new SCADA network, construct the Project elements, perform post-construction tasks, and provide warranty support. The Phase 2 award will be brought to Council for approval.</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>\$626,451.00</p>	<p>R-1951</p> <p>Carollo Engineers, Inc.</p> <p>CDM Smith, Inc.</p> <p>McDade-Woodcock, Inc.</p> <p>Tetra Tech, Inc.</p>



Sand Creek Water Reuse Facility Programmable Logic Controls Conversion And Improvements Project, Project Location Map

Aurora Water

15151 E. Alameda Pkwy, Aurora, CO 80012 USA
www.auroragov.org | 303-739-7370
waterengrgis@auroragov.org

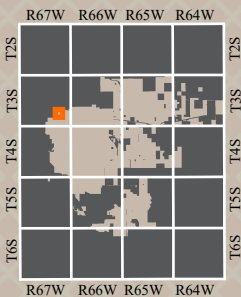


Aurora is Worth Discovering!



June 29, 2020

DISCLAIMER: The City of Aurora, Colorado, makes no warranties or guarantees, express or implied, as to the completeness, accuracy, or correctness of this data, nor shall the City incur any liability from any incorrect, incomplete, or misleading information contained therein. The City makes no warranties, either express or implied, of the value, design, condition, title, merchantability, or fitness for a particular purpose. The City shall not be liable for any direct, indirect, incidental, consequential, punitive, or special damages, whether foreseeable or unforeseeable, arising out of the authorized or unauthorized use of this data or the inability to use this data or out of any breach of warranty whatsoever.



Project Site Footprint

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 July 20, 2020 Council Meeting, Page 14^{0.2}



**City of Aurora
COUNCIL AGENDA COMMENTARY**

Item #: 9c
 SS: _____
 1st: _____
 2nd: _____

Item Title: Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Wilson & Company, Inc., Denver, Colorado in the amount of \$128,227.00 for providing Engineering Services for Storm CMP Rehabilitation Task 6, Project No. R-2041.
Item Initiator: Jones, Nathan - SR Procurement Agent - Finance
Staff Source: Nyirenda, Swirvine - Principal Engineer - Aurora Water
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 3.4--Maintain a reliable water system

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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.)*

Engineering Services for Task Orders 1 and 2 were completed in-house by Aurora Water personnel.

The award of the competitively bid contract for construction of the Storm Sewer CMP Rehabilitation Task 1 Project No. 5413A to Insituform Technologies, LLC in the amount of \$629,258.00 was reported on the Weekly Report to Council on December 22, 2014.

The award of the competitively bid contract for construction of the Storm Sewer Rehabilitation Task 2 Project No. 5501A to Insituform Technologies, LLC in the amount of \$686,682.10 was approved by City Council on April 4, 2016, Item No. 9c.

Engineering services contract for the CMP Rehabilitation Task 3 and 4 were performed by Kennedy/Jenks Consultants, Inc. under Task Order NO. 3 to the MESA V. The openly solicited Master Engineering Services Agreements (MESA-V) to thirty-six (36) firms in the not-to-exceed amount of \$1,000,000.00 per award were reported on the Weekly Report to Council on December 7, 2015.

The award of the competitively bid contract for construction of the CMP Rehabilitation Task 3 – CIPP Project No. 5587A to Layne Inliner, LLC in the amount of \$1,135,200.00 was approved by City Council on August 21, 2017, Item No. 9a.

The award of the competitively bid contract for construction of the CMP Rehabilitation Task 4 Project No. 5622A to C & L Water Solutions in the amount of \$314,082.00 was reported on the Weekly Report To Council June 25, 2018.

The award of the openly solicited contract for providing engineering services for the Storm CMP Rehabilitation Task 5 – CIPP Project No. R-1912 to Wilson and Company in the amount of \$120,000.00 was approved by City Council on July 9, 2018, Item No. 9g.

The award of the competitively bid contract for construction of the CMP Rehabilitation Task 5 – CIPP Project No. 5691A to American West Construction, LLC in the amount of \$1,031,000.00 was approved by City Council on August 19, 2019, Item No. 9e.

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

Background

In 2013, the City of Aurora engaged Wilson & Company Inc., Engineers and Architects (Wilson & Company) to conduct a comprehensive inspection and condition assessment of the stormwater Corrugated Metal Pipe (CMP) stormsewers. Approximately 41,000 feet of existing CMP conduits, ranging in size from 12-inches to 120-inches in diameter were evaluated and prioritized for rehabilitation or replacement. Wilson & Company completed an engineering report that included a summary of all CMP assessment findings, infrastructure evaluations, budgetary level cost estimates, priority rankings and recommendations for rehabilitation improvements. A 15-year horizon Capital Improvement Plan program estimated \$20 million is needed to rehabilitate or replace all the CMP within the study.

CMP Rehabilitation Tasks 1-5 have been completed.

CMP Rehabilitation Task 6 is the next project in the Capital Improvement plan developed by Wilson & Company. This project includes the rehabilitation of 3,000 linear feet of storm sewer lines, ranging in diameter from 24" to 108" just northwest of I-225 and Iliff Avenue within the Heather Garden's golf course (see attached map). The pipeline rehabilitation will utilize centrifugally cast concrete pipe (CCCP) and/or the cured-in-place-pipe (CIPP) methods. These are trenchless technologies that eliminate the need for excavation and thus avoid significant surface impacts. Impacts to the golf course will be minimal and coordinated with Heather Gardens.

Request for Proposal Results

The proposed engineering services for Storm CMP Rehabilitation Task 6 were solicited under a formal competitive Request for Proposal (RFP) using a qualification based selection process where the top-ranked firm is selected for the award of the contract. Only two (2) firms; JOHNSON MIRMIRAN & THOMPSON, INC. and Wilson & Company, Inc. submitted a response to the RFP.

Both firms were evaluated based on the following criteria contained in the RFP:

- Experience of firm CIPP;
- Experience of firm CCCP;
- Experience of the project team CIPP;
- Experience of the project team CCCP;
- Project understanding and approach;
- Overall QA/QC procedures;
- Overall impression of proposal and adherence to submittal requirements

As a result, Wilson & Company, Inc. was selected as the top-ranked firm.

A detailed scope of work, project schedule and price proposal in the total amount of \$128,227.00 were negotiated with Wilson & Company, Inc. for the Engineering Services for Storm CMP Rehabilitation Task 6, Project No. R-2041. The agreed upon amount is within the approved budget for this project. Negotiations included detailed discussions regarding the specific scope of work tasks, project schedule,

and labor hours for both professional and administrative categories that are necessary to complete the scope of services. The specific details regarding the proposed scope of services and cost breakdowns are shown in Attachment 8 to this commentary. The hourly rates proposed by Wilson & Company, Inc. are the same as their MESA VI agreement. Based on the above, the price proposal for providing the proposed consulting services is considered to be fair and reasonable. The final design and construction phase engineering support services are not included in the above proposed contract award. When the next phase of engineering services is needed for completing the project, it will be brought forward to City Council for approval.

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

Recommendation

Based on the above, staff recommends the City award the openly solicited contract to Wilson & Company, Inc., Denver, Colorado in the amount of \$128,227.00 for providing Engineering Services for Storm CMP Rehabilitation Task 6, Project No. R-2041. No Aurora firms submitted proposals for this project.

QUESTIONS FOR Committee

Does City Council approve the contract with Wilson & Company, Inc., Denver, Colorado in the amount of \$128,227.00 for providing Engineering Services for Storm CMP Rehabilitation Task 6, Project No. R-2041?

LEGAL COMMENTS

Awards worth \$50,000 or more require City Council approval if formal competitive bidding has not produced at least three responsive bids (City Code § 2-672(a)(3)(b)). (Lathers)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

Funding for this contract will be from the Capital Improvement Program, Wastewater Fund in the amount of \$128,227.00.

ORG USED: Storm CMP Rehab-SD (52465)

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

Not Applicable.

EXHIBITS ATTACHED:

1. Weekly Report To Council December 22, 2014.pdf
2. City Council Minutes April 4, 2016.pdf
3. Weekly Report To Council December 7, 2015.pdf
4. City Council Minutes August 21, 2017.pdf
5. Weekly Report To Council June 25, 2018.pdf
6. City Council Meeting Minutes July 9, 2018.pdf
7. City Council Meeting Minutes August 19, 2019.pdf
8. Wilson scope schedule fee.pdf
9. CMP Rehab Task 6 Map.pdf

2014

AWARDS \$50,000.00 - \$2,000,000.00 subject to call-up for which at least three bids were received, the lowest responsive bidder was selected, and no bid protest was filed:

COMPANY	DESCRIPTION OF AWARD	AWARD AMOUNT	BID / RESULTS
<p>LARRY H. MILLER FORD</p> <p>LAKEWOOD, CO</p> <p>Dept: Internal Services/Fleet</p>	<p>Award a competitively bid contract for the purchase of two (2) 2015 Ford F250 4x4 Crew Cab short-bed pickups.</p> <p><i>When Aurora piggy-backs off another government agency's competitive bid it is treated the same as if it were our own bid. 2-679</i></p>	<p>\$56,372.00</p>	<p>Arapahoe County Contract</p> <p>IFB-11-85</p>
<p>METRO PAVERS, INC. HENDERSON, CO</p> <p>Dept: Public Works/Streets</p>	<p>Award a competitively bid contract for the 2014 Miscellaneous Concrete Program. The proposed award is within the appropriated budget that was set aside for this project. City staff has reviewed Metro Pavers, Inc.'s bid for the project, verified references, and considers their overall bid to be fair and reasonable. The Invitation for Bids for this project required all bidders to submit a bid bond for guaranteeing their bid offers, and the proposed contract includes provisions for assessing liquidated damages to protect the City in the event the project is not completed on time.</p> <p><i>This award is the result of a competitive bid where the City received at least 3 bids. This award meets all the conditions set by Code for administrative award. 2-672-(a), (3), (2)</i></p>	<p>\$138,352.52</p>	<p>B-14007</p> <p>Metro Pavers, Inc. \$138,352.52</p> <p>Noraa Concrete Construction Corp. \$155,877.80</p> <p>Thoutt Bros. Concrete Contractors, Inc. \$171,108.16</p> <p>Casey's Construction, LLC \$179,772.59</p> <p>Fasick Concrete, Inc. \$189,749.50</p> <p>Rodriguez Construction Org. LLC. \$242,594.00</p>
<p>INSITUFORM TECHNOLOGIES, LLC</p> <p>CHESTERFIELD, MO</p> <p>Dept: Aurora Water</p>	<p>Award a competitively bid contract in the amount of \$629,258.00 for the construction of the Storm Sewer CMP Rehabilitation Task 1 Project. The proposed award is within the appropriated budget that was set aside for this project. City staff has reviewed Insituform Technologies, LLC's bid for the project, verified references, and considers their overall bid to be fair and reasonable. The Invitation for Bid for this project required all bidders to submit a bid bond for guaranteeing their bid offers, and the proposed contract includes provisions for assessing liquidated damages to protect the City in the event the project is not completed on time. Additionally, a 5% contingency amount is requested to be approved for this project. The requested contingency is not reflected in the amount cited here.</p> <p><i>This award is the result of a competitive bid where the City received at least 3 bids. This award meets all the conditions set by Code for administrative award. 2-672-(9), (3), (2)</i></p>	<p>\$629,258.00</p>	<p>5413A</p> <p>Insituform Technologies, LLC \$629,258.00</p> <p>Layne Inliner, LLC \$647,600.00</p> <p>Kenny Construction Company \$808,500.00</p>

- c. Proclamation declaring April 10 – 16, 2016 as Aurora Volunteer Appreciation Week – Mayor Hogan

Mayor Hogan invited Jamie LaDuke, Volunteer Coordinator, and Eddie Hayes, Volunteer, to come forward to accept the proclamation. Mayor Hogan read the proclamation declaring April 10 – 16, 2016 as Aurora Volunteer Appreciation Week. Each guest expressed appreciation for the proclamation.

Mayor Hogan recognized Boy Scouts from Troop #12.

7. **PUBLIC INVITED TO BE HEARD (non-agenda related issues only)**

Chad Nielson, Leadership Aurora Class 2015-2016, representing families of those impacted by the 7/20 tragedy, spoke the class project, an online auction to raise funds for the 7/20 memorial.

Council Member Roth asked if the fundraising effort had a presence on Twitter and Facebook. Mr. Nielson answered affirmatively.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented.

9. **CONSENT CALENDAR - 9a-f**

General Business

- a. Consideration to AWARD A SOLE SOURCE CONTRACT to Microsoft Corporation, Reston, Virginia in the amount of \$84,630.00 for premiere software support of Office 365 through April 2017. STAFF SOURCE: Aleta Jeffress, Director, Information Technology

Council Member LeGare stated his discovery that the cost of the contract translated to approximately \$600 per support hour and asked staff to speak to previous IT problems that led to the need for this premiere software support.

Aleta Jeffress, Director, Information Technology, did so, noting the package included phone and onsite support 24/7.

Motion by LeGare, second by Mounier, to approve item 9a.

Voting Aye: Mayor Hogan, Bergan, Berzins, Cleland, Lawson, LeGare, Mounier, Peterson, Pierce, Richardson, Roth

- b. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Whayne Enterprises, Denver, Colorado in the not-to-exceed amount of \$281,394.84 for custodial cleaning services for the southern half of the City through April 30, 2017, B-4145. STAFF SOURCE: Chris Carnahan, Deputy Director Public Works Operations, Public Works

- c. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Insituform Technologies, LLC, Chesterfield, Missouri in the amount of \$686,682.10 for construction of the Storm Sewer Rehabilitation Task 2 Project, Project Number 5501A. STAFF SOURCE: Steven Fiori, Project Delivery Service Manager, Aurora Water

Motion by Roth, second by Lawson, to approve items 9b – 9c.

Voting Aye: Mayor Hogan, Bergan, Berzins, Cleland, Lawson, LeGare, Mounier, Peterson, Pierce, Richardson, Roth

- ◆ *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.*

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): (continued)

COMPANY	DESCRIPTION OF AWARD	AWARD AMOUNT	BID / RESULTS
<p>VARIOUS FIRMS SEE NEXT PAGE FOR LISTING OF FIRMS</p> <p>Dept: Water</p>	<p>Award openly solicited Master Engineering Services Agreement (MESA – V) contracts to thirty-six (36) separate firms identified on the next page of this Weekly Report Item in the not-to-exceed amount of \$1,000,000.00 per award. The proposed MESA - V contracts are unfunded awards for providing on-call engineering design and other related professional services on an as-needed basis. The approval of the MESA contracts allows for the expedited award of services with City Council approval, negotiated contract terms and conditions, and billable hourly rates, which are all approved and agreed to upfront. When a need for service arises, a task order purchase order is issued that encumbers funds for the specific task order work under the umbrella of a firm’s MESA – V contract. Award of a task order is handled through an informal competitive solicitation process conducted with the firms who have been awarded a MESA – V contract. The total dollar amount of all awarded task orders to any firm awarded a MESA – V contract will not exceed \$1,000,000.00 over the next three (3) year period.</p> <p>The proposed MESA – V contracts were solicited under a formal competitive Request for Proposal (RFP) using a qualifications-based selection process where the top-ranked firms in each of nineteen (19) engineer professional service disciplines are selected for the award of a contract. The thirty-six (36) firms identified on the next page of this Weekly Report item were selected as those top-ranked firms for award of a MESA – V contract out of the sixty (60) total firms that responded. All of the firms responding to the RFP were evaluated based on the following criteria:</p> <ol style="list-style-type: none"> 1. Experience & Competence of Project Team; 2. Past Performance & References; 3. Project Management & Methodology; and 4. Completeness of Proposal. <p>A detailed hourly rate sheet for all professional, technical and administrative support personnel for each of the thirty-six (36) proposed firms were requested for review and approval by City staff. A comprehensive review and comparison of the hourly rate proposals for each firm was made against the other firms selected for award of a MESA – V contract. As a result, the proposed hourly rates for each of the selected firms are 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>\$1,000,000.00/</p> <p>Per Each Firm</p>	<p>R-1740</p>

PROPOSED FIRMS FOR AWARD OF MESA – V CONTRACT

**AECOM TECHNICAL SERVICES, INC.
DENVER, CO**

**AQUARIUS CONTROLS, INC.
ELIZABETH, CO**

**BLACK & VEATCH CORPORATION
DENVER, CO**

**BRIERLY ASSOCIATES
DENVER, CO**

**BT CONSTRUCTION, INC.
HENDERSON, CO**

**BURNS & MCDONNELL ENGINEERING, INC.
CENTENNIAL, CO**

**CALIBRE ENGINEERING, INC.
HIGHLANDS RANCH, CO**

**CAROLLO ENGINEERS, INC.
BROOMFIELD, CO**

**CH2M HILL ENGINEERS, INC.
ENGLEWOOD, CO**

**DEERE & AULT CONSULTANTS, INC.
LONGMONT, CO**

**DEWBERRY ENGINEERS, INC.
DENVER, CO**

**ERO RESOURCES CORPORATION
DENVER, CO**

**FEI ENGINEERS, INC.
GREENWOOD VILLAGE, CO**

**GROUND ENGINEERING CONSULTANTS, INC.
ENGLEWOOD, CO**

**HATCH MOTT MACDONALD
LAKEWOOD, CO**

**HAWKSLEY CONSULTING
BROOMFIELD, CO**

**HIGH COUNTRY HYDROLOGY, INC.
BOULDER, CO**

**HDR ENGINEERING, INC.
DENVER, CO**

**ICON ENGINEERING, INC.
CENTENNIAL, CO**

**JACOBS ENGINEERING GROUP, INC.
DENVER, CO**

**KENNEDY/JENKS CONSULTANTS, INC.
LAKEWOOD, CO**

**KLEINFELDER
DENVER, CO**

**KUMAR & ASSOCIATES, INC.
DENVER, CO**

**LEONARD RICE ENGINEERS, INC.
DENVER, CO**

**MERRICK & COMPANY
GREENWOOD VILLAGE, CO**

**MWH AMERICAS, INC.
DENVER, CO**

**NINYO & MOORE
GREENWOOD VILLAGE, CO**

**OLSSON ASSOCIATES, INC.
GOLDEN, CO**

**PK ELECTRICAL, INC.
GREENWOOD VILLAGE, CO**

**PROVIDENCE INFRASTRUCTURE CONSULTANTS
CENTENNIAL, CO**

**QUANTUM WATER & ENVIRONMENTAL
LAKEWOOD, CO**

**RESPEC, INC.
DENVER, CO**

**RIVERSIDE TECHNOLOGY, INC.
FORT COLLINS, CO**

**RMH GROUP, INC.
LAKEWOOD, CO**

**SHANNON & WILSON, INC.
DENVER, CO**

**VANASSE HANGEN BRUSTLINE, INC.
DENVER, CO**

Mayor Hogan invited Mr. Jongbin Lee, Chief of the Seongnam City Trade and Exchange Team; Ms. Jihyun "Dana" Jeong, Senior Trade Officer, Seongnam City Trade and Exchange Team; Mr. Yeonwook Jeong, Seongnam City Trade and Exchange Team; Ms. Becky Hogan, Chair of the ASCI Korea Committee; Ms. Jennifer Kim, Korea Committee volunteer; Mr. Peter Lee, Korea Committee volunteer; and Ms. Karlyn Shorb, CEO, Aurora Sister Cities International, to come forward. Mayor Hogan recognized the delegation from Seongman City, South Korea. Each guest expressed appreciation for the proclamation.

Mayor Hogan recognized Boy Scout Troop 267.

7. **PUBLIC INVITED TO BE HEARD (non-agenda related issues only)**

Becky Hogan, Chair of the ASCI Korea Committee, presented hand-crafted traditional items to City Council.

Mayor Pro Tem Lawson accepted on behalf of the City Council.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented.

9. **CONSENT CALENDAR - 9a-j**

General Business

- a. **Consideration to AWARD A COMPETITIVELY BID CONTRACT to Layne Inliner, LLC, Kiowa, Colorado in the amount of \$1,135,200.00 for the CMP Rehabilitation Task 3-CIPP, Project No. 5587A. STAFF SOURCE: Steven Fiori, Project Delivery Service Manager, Aurora Water**
- b. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Concrete Express, Inc. (dba CEI), Denver, Colorado in the amount of \$799,933.50 for the Colfax & Lansing Storm Sewer Improvements (RE-BID), Project No. 5550A. STAFF SOURCE: Steven Fiori, Project Delivery Service Manager, Aurora Water
- c. Consideration to AMEND AN OPENLY SOLICITED CONTRACT with Carollo Engineers, Inc., Broomfield, Colorado in the amount of \$1,061,479.00 to add final design of Task 2, Chlorine Contact Chamber to the Wemlinger Water Purification Facility Treated Water Reservoir Project, R-1772. STAFF SOURCE: Steven Fiori, Project Delivery Service Manager, Aurora Water
- d. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Cabot Norit Americas, Inc., Marshall, Texas in the amount of \$295,488.00 for the purchase of granular activated carbon water treatment media for the Binney Water Purification Facility (Invitation for Bid B-4250). STAFF SOURCE: Bobby Oligo, Manager of Water Treatment, Aurora Water
- e. Consideration to AWARD CHANGE ORDER #1 TO THE SINGLE SOURCE CONTRACT with National Meter and Automation, Inc., Centennial, Colorado in the amount of \$133,450.00 for the purchase of additional Badger water meters for 2017. STAFF SOURCE: Steven Sciba, Manager Water Service Operations, Aurora Water
- f. Consideration to EXTEND A COMPETITIVELY BID CONTRACT to HD Waterworks Supply Ltd., Henderson, CO in the total not-to-exceed amount of \$877,700.00 to purchase pipeline parts as required for the Water infrastructure through September 30, 2018. (B4175) STAFF SOURCE: Steven Sciba, Manager Water Service Operations, Aurora Water

- g. Consideration to EXTEND A COMPETITIVELY BID CONTRACT to Ferguson Waterworks, Aurora, CO in the total not-to-exceed amount of \$253,800.00 to purchase pipeline parts as required for the Water infrastructure through September 30, 2018. (B4175) STAFF SOURCE: Steven Sciba, Manager Water Service Operations, Aurora Water
- h. Consideration to AWARD WORK PACKAGE NO. 2 of the Central Recreation Center to Adolfson & Peterson Construction, Aurora, Colorado in the amount of \$2,805,653.00. R-5540A (**Staff Requests a Waiver of Reconsideration**) STAFF SOURCE: Lynne Center, Principal Engineer, Public Works
- i. Consideration to AWARD SINGLE SOURCE CONTRACT to H&E Equipment Services, Henderson, Colorado in the amount of \$570,890.00 for the purchase of one (1) Emergency One custom pumper fire truck. (**Staff Requests a Waiver of Reconsideration**) STAFF SOURCE: Mark Hinterreiter, Manager of Fleet Services, Internal Services
- j. Consideration to AWARD A COMPETITIVELY BID CONTRACT to US Distributing, Inc., Denver, Colorado in the not-to-exceed amount of \$80,000.00 for the purchase AC Delco OEM parts as required through August 31, 2018, for Fleet Services. (B-4259) STAFF SOURCE: Mark Hinterreiter, Manager of Fleet Services, Internal Services

Motion by Roth, second by Richardson, to approve items 9a – 9j with waivers of reconsideration on items 9h and 9i.

Voting Aye: Mayor Hogan, Bergan, Berzins, Lawson, LeGare, Mounier, Peterson, Pierce, Richardson, Roth

10. RESOLUTIONS

- a. **R2017-61**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, setting the date of a public hearing on the petition for organization of the Citadel on Colfax Business Improvement District and ordering the publication and mailing of a notice of such hearing. STAFF SOURCE: Gary Sandel, Project Manager, General Management

Motion by Berzins, second by Mounier, to approve item 10a.

AMENDMENT I

Motion by Richardson, second by Bergan, to amend item 10a to provide that the time of the public hearing on September 11, 2017 shall be as designated by the Mayor; the City Attorney shall be tasked with the responsibility to insert the designated time in the notice provided for in the hearing.

Voting Aye: Bergan, Berzins, Lawson, LeGare, Mounier, Peterson, Pierce, Richardson, Roth

- b. **R2017-62**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, setting the date of a public hearing on the petition for organization of the Painted Prairie Business Improvement District Number One and ordering the publication and mailing of a notice of such hearing. STAFF SOURCE: Jacob Cox, Project Manager, General Management

Motion by Roth, second by Lawson, to approve item 10b.

AWARDS \$50,000.00 - \$2,000,000.00 subject to call-up for which at least three bids were received, the lowest responsive bidder was selected, and no bid protest was filed: (Continued)

COMPANY	DESCRIPTION OF AWARD	AWARD AMOUNT	BID / RESULTS
<p>C&L WATER SOLUTIONS, INC. LITTLETON, CO Dept: Water</p>	<p>Award a competitively bid contract to C&L Water Solutions, Inc. in the amount of \$314,082.00 for the CMP Rehabilitation Task 4 Project. The proposed award is within the appropriated budget that was set aside for this project. City staff has reviewed C&L Water Solutions' bid for the project, verified references, and considers their overall bid to be fair and reasonable. The Invitation for Bid solicitation for this project required all bidders to submit a bid bond for guaranteeing their bid offers, and the proposed contract includes provisions for assessing liquidated damages to protect the City in the event the project is not completed on time.</p> <p>Additionally, a 10% contingency amount is requested to be approved for this project because this is a rehabilitation of existing infrastructure, which may have deteriorated since it was last inspected during design. The requested contingency is not reflected in the amount of the award cited above.</p> <p><i>This award is the result of a competitive bid where the City received at least 3 bids. This award meets all the conditions set by Code for administrative award. 2-672-(9), (3), (2)</i></p>	<p>\$314,082.00</p>	<p>5622a C&L Water Solutions \$314,082.00 Levi Contractors \$354,654.00 Insituform Technologies \$426,253.00</p>
<p>COLORADO DESIGNSCAPES, INC. CENTENNIAL, CO Dept: PROS</p>	<p>Award a competitively bid contract to Colorado Designscapes, Inc. in the amount of \$1,715,500.00 for the 2018 Medians Project. The proposed award is within the appropriated budget that was set aside for this project. City staff has reviewed Colorado Designscapes, Inc.'s bid for the project, verified references, and considers their overall bid to be fair and reasonable. The Invitation for Bid solicitation for this project required all bidders to submit a bid bond for guaranteeing their bid offers, and the proposed contract includes provisions for assessing liquidated damages to protect the City in the event the project is not completed on time.</p> <p>Additionally, a 5% contingency amount is requested to be approved for this project. The requested contingency is not reflected in the amount of the award cited above.</p> <p><i>This award is the result of a competitive bid where the City received at least 3 bids. This award meets all the conditions set by Code for administrative award. 2-672-(9), (3), (2).</i></p>	<p>\$1,715,500.00</p>	<p>B-5627A Colorado Designscapes, Inc. \$1,715,500.00 PSI Construction Management \$1,934,174.00 T2 Construction, Inc. \$2,166,600.00 Richdell Construction \$2,783,150.00</p>

Abstaining: None

6. **CEREMONY**

- a. Swearing in of newly appointed Boards and Commission members – Presiding Judge Shawn Day

Judge Shawn Day administered the oath of office to the board and commission members. City Council congratulated the members and thanked them for their service to Aurora.

<u>Name</u>	<u>Board or Commission</u>
Robert Niedringhaus	Art in Public Places
Juanita Audrey	Aurora Commission for Seniors
Ivy Hontz	Aurora Commission for Seniors
Janice "Auset Maryam Ali" Crenshaw	Cultural Affairs Commission
Sethe Tucker	Cultural Affairs Commission
Doinne Williams	Cultural Affairs Commission

Mayor LeGare recognized Ethan Shoop, a scout from Boy Scout Troop #375 sponsored by the American Legion Post Aurora.

7. **PUBLIC INVITED TO BE HEARD (non-agenda related issues only)**

James Vitt, Aurora, Colorado, expressed concerns related to a potential fire hazard because of dry grass and fireworks being set off near Dunkirk Street and Espana Way and the lack of a crossway at Parker Road and I-225.

Beth Strimpel, Aurora, Colorado, Del Mar Neighborhoods United (DMNU), spoke in support of the Original Aurora rezoning proposal.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented.

9. **CONSENT CALENDAR - 9a-m**

General Business

- a. Consideration to AWARD A SOLE SOURCE CONTRACT to Loomis, Aurora, Colorado in the not-to-exceed amount of \$60,000.00 for armored car services through June 30, 2019. STAFF SOURCE: Nancy Wishmeyer, Controller, Finance

Council Member Richardson pointed out the contract stated Loomis was the only provider that responded to the bid request and asked staff to speak to that concern.

Nancy Wishmeyer, Controller, Finance, did so, noting the City has not received proposals from other providers in the past because they could not meet Loomis' contract price or the City's schedule and same-day deposit requirements.

Council Member Richardson asked staff to formalize the outreach efforts in written form to verify that Loomis was the only provider. Ms. Wishmeyer agreed to do so.

Motion by Richardson, second by Gruber, to approve item 9a.

Voting Aye: Mayor LeGare, Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth

- b. Consideration to AWARD A COMPETITIVELY BID CONTRACT for fire uniforms to Gall's, Denver, Colorado in the amount not-to-exceed \$140,830.60. (B-4401) STAFF SOURCE: Mathew Wasserburger, Assistant Director, Fire
- c. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Hydro Resources – Rocky Mountain, Inc., Fort Lupton, Colorado in the amount of \$478,020.00 for the construction of the 2018 North Campus Well Field Rehabilitation, Project No. 5638A. STAFF SOURCE: Steven Fiori, Project Delivery Service Manager, Aurora Water
- d. Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Western Ag Air Inc., Rocky Ford, Colorado in the total amount of \$168,050.00 to provide herbicide application services for the Rocky Ford Ditch Revegetation Project through June 2019. (R-1917) STAFF SOURCE: Alexandra Davis, Deputy Director Water Resource, Aurora Water
- e. Consideration to AWARD A SOLE SOURCE CONTRACT to Superior LLC (formerly Sungard Public Sector), Lake Mary, Florida in the amount of \$91,713.99 for annual software maintenance and support on the Water billing system through January 2019. STAFF SOURCE: Jo Ann Giddings, D/D Water Financial Administration, Aurora Water
- f. Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Carollo Engineers, Inc., Littleton, Colorado in the amount of \$4,091,052.00 for professional engineering services for the Wemlinger Water Purification Facility (WPF) PLC Conversion and Improvements Project, R-1896. **(Staff Request a Waiver of Reconsideration)** STAFF SOURCE: Steven Fiori, Project Delivery Service Manager, Aurora Water
- g. Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Wilson & Company, Inc., Denver, Colorado in the amount of \$120,000.00 for providing Engineering Services for Storm CMP Rehabilitation Task 5 – CCCP, Project R-1912. STAFF SOURCE: Steven Fiori, Project Delivery Service Manager, Aurora Water
- h. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Airgas USA, LLC Denver, Colorado in the not-to-exceed amount of \$55,000.00 for the purchase of the chemical Liquid Carbon Dioxide for use at the Binney Water Purification Facility. (B-4431) STAFF SOURCE: Bobby Oligo, Manager of Water Treatment, Aurora Water
- i. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Municipal and Contractors Equipment, Co., Thornton, Colorado in the amount of \$158,213.00 for the purchase of a Arrow-Master Mode 1350T mobile hydraulic hammer. (B-4429) STAFF SOURCE: Mark Hinterreiter, Manager of Fleet Services, General Management
- j. Consideration to EXTEND A COMPETITIVELY BID CONTRACT with US Distributing, Inc., Denver, Colorado in the not-to-exceed amount of \$90,000.00 for the purchase of AC Delco OEM parts as required by Fleet Services from September 1, 2018, through August 31, 2019. (B-4259) STAFF SOURCE: Mark Hinterreiter, Manager of Fleet Services, General Management
- k. Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Scenic Mercenary, Denver, Colorado in the amount of \$140,000.00 to provide design, materials, construction and installation of a new studio set in the City's TV Studio. (R-1900) STAFF SOURCE: Randy Simpson, Community Marketing Supervisor, Communications

Motion by Roth, second by Berzins, to approve items 9b – 9k with a waiver of reconsideration on item 9f.

Voting Aye: Mayor LeGare, Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth

Final Ordinances

- ◆ l. **2018-24**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, submitting to a vote of the registered electors of the City of Aurora, Colorado, at the Special Municipal Election of November 6, 2018, a proposed Amendment to Article III of the City Charter concerning the probationary period for newly appointed firefighters and officers within the fire rescue and police department. STAFF SOURCE: Chief Fernando Gray, Fire

Motion by Richardson, second by Bergan, to approve item 9l.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth

- ◆ m. **2018-25**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, amending the 2009 Aurora Comprehensive Plan e-470/Northeast Plains Land use map to allow for e-470 Regional Retail/Commercial Subarea zoning in an area currently designated to be zoned as e-470 Medium Density Residential Subarea (AURORA HIGHLANDS COMPREHENSIVE PLAN AMENDMENT) STAFF SOURCE: Deborah Bickmire, Planner, Planning & Development Services

Motion by Berzins, second by Roth, to approve item 9m.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth

10. RESOLUTIONS

- ◆ a. **R2018-60**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the Intergovernmental Agreement among the City of Aurora, Colorado acting by and through its utility enterprise, the Colorado River Water Conservancy District, the Basalt Water Conservancy District, the Board of County Commissioners of Eagle County, the Board of County Commissioners of Pitkin County, the Grand Valley Water Users Association, Orchard Mesa Irrigation District and the UTE Water Conservancy District acting by and through the UTE Water Activity Enterprise regarding settlement of the Busk Ivanhoe water rights change case. STAFF SOURCE: Alexandra Davis, Deputy Director Water Resource, Aurora Water

Motion by Roth, second by Hiltz, to approve item 10a.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth

11. ORDINANCES FOR FINAL

- ◆ a. **2018-21**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, rezoning 4.8 acres more or less at the Southwest corner of 14th Avenue and Potomac Street from high density multi-family residential district (R-4) to Fitzsimons boundary area district subarea 4 (FBAD 4) and amending the zoning map accordingly. (FITZ ON 14TH REZONE) **Ordinance 2018-21, Introduced 6-4 (Hiltz, Johnston, Lawson, Murillo voting no) at the June 4, 2018 Council meeting.**

- ◆ **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.**

Detention Center. She made demands on the City Council to remedy the healthcare, legal aid, communication, and oversight issues.

Amanda Mohelang discussed the unsafe, unsanitary, inhumane conditions at the GEO Detention Center and asked the City Council to address those concerns for moral, ethical and healthcare reasons.

Emzy Veazy III discussed the United States Flag Code and suggested the City Council and City staff learn flag etiquette and listed ways in which they could do so. He suggested City Council encourage their citizenry to do the same and to incorporate the US Flag Code into City Charter.

Christina LaFon, Sanctuary for All – Denver, stated the GEO Detention Center’s human rights atrocities were evil and must end. She discussed the City and County of Denver’s City Council’s recent decision to end their contracts with GEO and suggested the Aurora City Council do the same and recommended they create a defense fund, allow unfettered access to the detainees for family and legal and work towards reuniting each detainee in the facility with their families.

Council Member Hiltz clarified the City of Aurora did not have contracts with the GEO Group or any of the private detention centers. She stated it was a facility that was licensed as a regular business and contracted as a federal facility.

Susan Beeman spoke in opposition to current dog legislation approved in the City of Aurora related to the three dogs per household cap and breed specific legislation. She discussed the restricted breeds, stated her view that pit bulls were friendly, lovely dogs and shared her personal history and experience with having several dogs in her home. She expressed concerns related to how the legislation impacted show dogs and breeders.

Council Member Richardson expressed appreciation to Ms. Beeman for her comments and clarified he and Ms. Beeman were not family or friends, noting she spoke of her own volition. He stated he has shared ongoing complaints with staff related to the Animal Care’s distribution of misinformation regarding the Fancier’s Permit. He stated the show dog status was not involved in the ordinance passed by City Council.

Matthew Wozniak, Sanctuary for All – Colorado, discussed specific abuses and injustices alleged by the detainees at the GEO Detention facility. He stated his understanding that the City did not contract with the GEO Group and that they held a business license. He stated his opinion that City Council would be doing something if they really cared about the situation. He stated what was going on at GEO was not right and recommended the City Council do something about it.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented.

9. **CONSENT CALENDAR - 9a-1**

There will be no discussion of General Business items unless a City Council Member so requests, in which event the item will be moved to a discussion item on the regular agenda.

General Business

- ◆ ***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.***

- a. Consideration to EXTEND A COMPETITIVELY BID CONTRACT with Revolution Foods, Commerce City, Colorado in the amount not-to-exceed \$97,000.00 for providing food vendor services for the 2019/2020 At-Risk After School Meals Program, B-4269.
Presenter: Joe Sack, Manager of Recreation Services
- b. Consideration to AWARD A SOLE SOURCE CONTRACT to Fluid Imaging Technologies Inc., Scarborough, ME in the amount of \$105,835.00 to purchase a FlowCam instrument for the Water Quality Control Laboratory.
Presenter: Dan Mikesell, Deputy Director of Operations
- c. Consideration to AWARD A SOLE SOURCE CONTRACT to Infor Public Sector Inc., Alpharetta, Georgia in the amount of \$108,712.99 for annual maintenance on the asset management software system for Water through April 2020. **(Staff Requests a Waiver of Reconsideration)**
Presenter: Sarah Young, Deputy Director Water Planning/Engineering
- d. Consideration to AWARD A COMPETITIVELY BID CONTRACT to T. Lowell Construction, Inc., Castle Rock, Colorado in the amount of \$3,300,000.00 for the construction of the Gun Club Raw Water Expansion Project, Project No. 5700A. **(Staff Requests a Waiver of Reconsideration)**
Presenter: Sarah Young, Deputy Director Water Planning/Engineering
- e. Consideration to AWARD A COMPETITIVELY BID CONTRACT to American West Construction, LLC, Denver, Colorado in the amount of \$1,031,000.00 for the construction of CMP Rehabilitation Task 5 CCCP Project, Project No. 5691A.
Presenter: Swirvine Nyirenda, Principal Engineer
- f. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Chato's Concrete, LLC Denver, Colorado in the amount of \$233,011.75 for construction of roadside safety improvements at various locations in the City. Project Number 18073.
Presenter: Matthew Kozakowski, Transportation Project Delivery Manager
- g. Consideration of the Approval for DOLA's FY2021 Grey and Black Marijuana Enforcement grant, effective July 1, 2020. **(This item also appears on the August 19, 2019 Study Session) (Due to this item being dual listed, the backup is included in item 2c of the Study Session Packet.)**
Presenter: Police Lieutenant Scott Torpen

Motion by Roth, second by Bergan, to approve items 9a – 9g with waivers of reconsideration on items 9c and 9d.

Voting Aye: Mayor LeGare, Bergan, Berzins, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

Final Ordinances

- ◆ h. **2019-47**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, adding language to Section 2-902 of the City Code related to qualifications for membership in the Aurora Youth Commission.
Presenter: Jenna Katsaros, Superintendent Level 1

Motion by Roth, second by Bergan, to approve item 9h.

Voting Aye: Bergan, Berzins, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ i. **2019-49**

- ◆ **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.**

Engineering Services for Storm CMP Rehabilitation Task 6 – CIPP & CCCP

Proposed Scope of Services 06/02/2020

Phase 1: CMP Data Research, Coordination and CMP Rehabilitation Analysis and Reporting

- Data Collection, Research, and Rehabilitation Method.
 - Download current City of Aurora drainage reports and plat maps. To the extent possible, obtain current as-built drawings for the eleven (11) CMP conduits. Contact and coordinate with contractors for rehabilitation method for the subject conduit.

These shall include:
 - (1) Cured-In-Place Piping (CIPP)
 - (2) Centrifugally Cast Concrete Pipe (CCCP), Spin Cast
- Meetings with City of Aurora (Aurora Water).
 - Schedule, identify, and coordinate meetings with City of Aurora staff. The goals of the meetings will inform staff about the project, discuss special concerns that may had with the rehabilitation efforts, and obtain concurrence on the process(es) to be utilized. The City of Aurora Development Handbook (2013, unless a revised edition is available) will be utilized for construction document preparation and approvals.
- Hydraulic Capacity Analysis, Scour Analysis, and Concept Design for Rehabilitation of CMP Conduit.
 - Hydraulic capacity analysis will be completed for the eleven (11) CMP conduit locations with the proposed rehabilitation methods (CIPP or CCCP), materials, and thicknesses. Hydraulic capacity analysis for the eleven (11) locations will utilized current USACE HEC-RAS and FHWA HY8 hydraulic modeling software, where applicable. The analysis will also be utilized to perform local scour calculations in the immediate vicinity of the proposed culvert to estimate the magnitude of potential scour around the existing outlet structure. As built information of the conduits will be utilized for analysis, hydraulic capacity, as well as design for the rehabilitation options; including pit locations, construction access, construction staging areas, etc.
- Preliminary Design Report
 - A preliminary design report will be prepared for the eleven (11) CMP conduit locations. This will include the results from the existing and proposed hydraulic capacity analysis, scour analysis, and other hydraulic factors with figures and supporting model data. These results will be documented and used to determine the rehabilitation improvement recommendations. A preliminary design report will be completed to present these findings, figures, and supporting data. A meeting will be scheduled with Aurora Water and Public Works staff to review and discuss the concept to determine the elements to be included in the final design of the rehabilitation option. A risk register will be included in the report.

Phase 2: Construction Documents for Design and Rehabilitation for the Eleven (11) CMP Conduit Locations

- 90% Pre-Final and Final Design
 - Preparation of construction documents in pre-final (90%) and final design levels for CMP rehabilitation. Final plan documents with engineering opinions of associated costs and supplemental specifications (to accompany COA front end specifications) will be developed for the recommended rehabilitation method. Wilson & Company will prepare the required construction plan sheets in accordance with the requirements of the City of Aurora Development Handbook which will include:
 - Title Sheet
 - General Notes and Quantities
 - CDHEP Erosion Control Sheets
 - Stormwater Bypass Phasing Plan
 - Traffic Control and CMP Access Plan
 - Site Layout Sheets
 - Rehabilitation Plan Sheets
 - CIPP Rehabilitation Details
 - CCCP Rehabilitation Details
 - Drainage Data Sheets
 - Stormwater Management Plan
 - Division 1 Specifications and Special Provisions Development
 - Bid Tabulations
 - Cost Estimate
- Pre-Qualification of Contractors
 - Preparation of pre-qualification for contractors specializing in the rehabilitation method presented in the design report. This will include development of a performance design criterion.

Phase 3: Construction Services for Rehabilitation

Wilson & Company will provide construction services to address the following items:

- Bid phase support, addendums, pre-bid meetings, answering questions
- Construction plan clarifications
- Requests for information (RFI)
- Review of shop drawings and submittals

Phase 4: Supplemental Services

Other project related work will be done at the request of Aurora Water. If requested, a scope of work, fee estimate, and schedule will be submitted for approval. These items may include, but not limited to, the following:

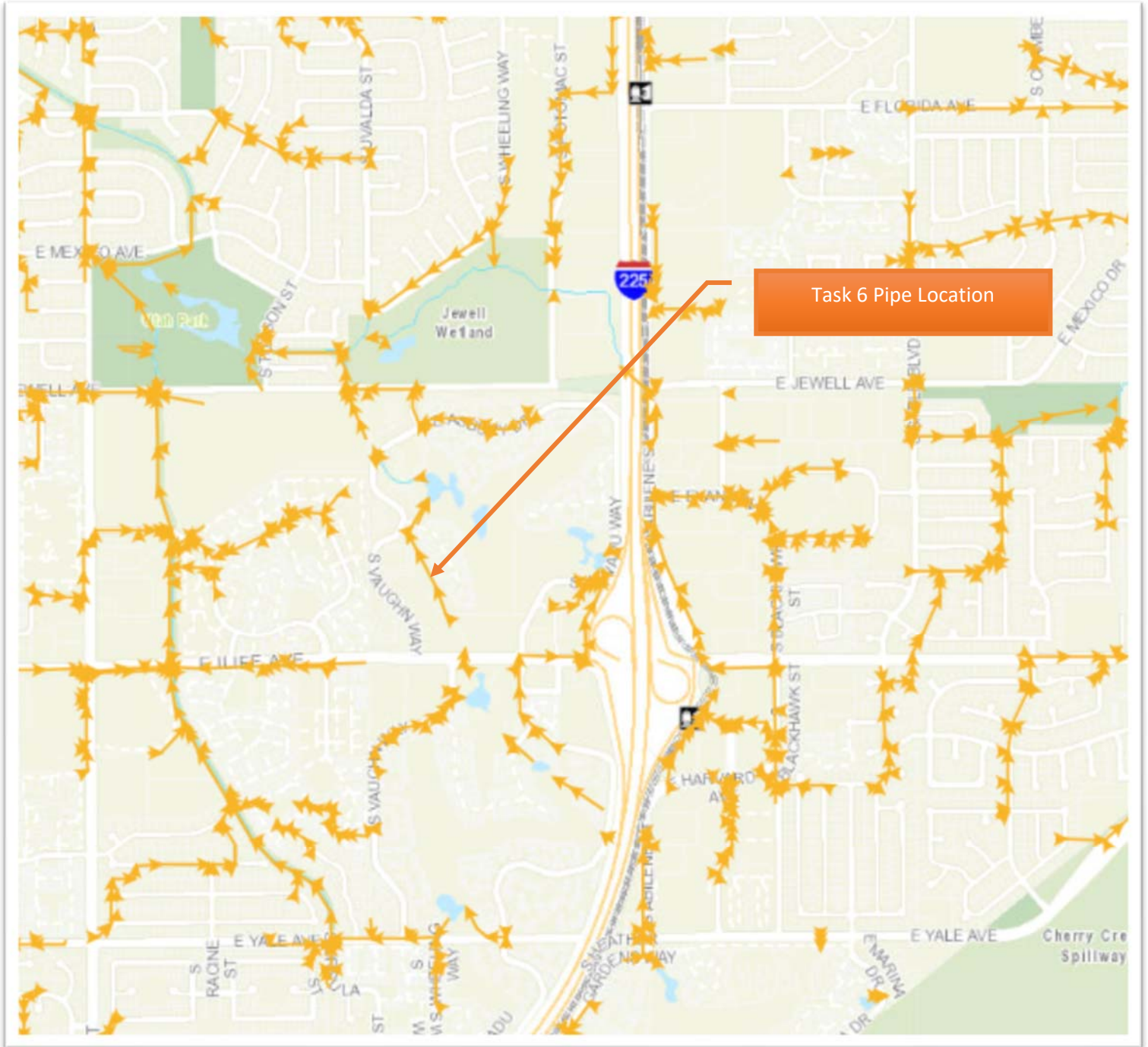
- USACE meetings and coordination
- Conduit outlet projection or mitigation design tasks based on the estimated magnitude of scour done in Phase 1
- Additional construction management tasks such as field inspection, progress meetings, or review of certification letter stating that the installation of rehabilitation of the CMP storm sewers met the rules and regulations per vendors specifications.

Engineering Services for Storm CMP Rehabilitation Task 6
Proposed Fee Estimate
6/2/2020

Phase and Task Description	Wilson & Company, Inc.				Sub-Contractor Fees	Task Cost
	Project Manager \$198/hr	Project Engineer \$134/hr	Engineer, EIT \$112/hr	Admin. Assistant \$60/hr	Sub Consultant N/A	
Phase I. CMP Data Research, Coordination, and CMP Rehabilitation Analysis and Reporting						
Data Collection, Research, and Rehabilitation Method	4	4	12			\$2,672
Meetings with Aurora Water	12	12	12			\$5,328
Hydraulic Capacity Analysis, Scour Analysis, and Concept Design for Rehabilitation of CMP Conduit	8	60	80			\$18,584
Preliminary Design Report	8	80	80	4		\$21,504
Phase I. Sub-Totals	32	156	184	4		
					Phase I. Fee	\$48,088
Phase II. Construction Documents for Design and Rehabilitation						
Preparation of Preliminary CMP Rehabilitation Plans	8	60	80			\$18,584
90% City Review Meeting	4					\$792
Consultant Revisions on 90% Comments	8	20	40			\$8,744
Development of Pre-Qualification of Contractors	8		30			\$4,944
Final Plans, Specifications and Cost Estimate	24	80	80			\$24,432
Phase II. Sub-Totals	52	160	230	0		
					Phase II. Fee	\$57,496
Phase III. Construction Services for Rehabilitation						
Construction Plan Clarifications / RFI	4	8	8			\$2,760
Review of Shop Drawings	8	14	6			\$4,132
Phase III. Sub-Totals	12	22	14	0		
					Phase III. Fee	\$6,892
Phase IV. Supplemental Services (as requested by Aurora Water)						
Any work done per at the request of Aurora Water						
Phase IV. Sub-Totals	0	0	0	0		
					Phase IV. Fee	\$15,000.00
Other Direct Costs						
Item				Quantity	Unit Rate	Item Cost
Use of Company or personal vehicles				400	\$0.56	\$224.00
Small Format 8.5 x 11" black and white copies				150	\$0.06	\$9.00
Large Format 11 x 17" copies				150	\$0.12	\$18.00
Misc. reimbursables				1	LS	\$500.00
					Total Direct Costs	\$751.00
					Phase I - III Sub Total: Lump Sum	\$113,227.00
					Phase IV Sub Total: T&M	\$15,000.00
					PROJECT TOTAL	\$128,227.00



Engineering Services for Storm CMP Rehabilitation Task 6 Location Map





**City of Aurora
COUNCIL AGENDA COMMENTARY**

Item #: 9d
 SS: _____
 1st: _____
 2nd: _____

Item Title: Consideration to AWARD A SINGLE SOURCE CONTRACT to Keesen Landscape Management Inc., Englewood, Colorado in the not-to-exceed amount of \$210,000.00 for Weed Mowing and Trash Removal Services (Abatement Services) as required through December 31, 2020.
Item Initiator: Baca, Lynn - Procurement Agent - Finance
Staff Source: Sheffield, Nancy - Interim Director - Housing and Community Services
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 1.0--Assure a safe community for people

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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 second option year was approved in the amount of not-to-exceed \$210,000.00 at the May 20, 2019 City Council meeting, Agenda Item 9a.

Change Order No. 2 was approved for an additional not-to-exceed amount of \$60,000.00 on the March 9, 2020 Weekly Report.

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

Neighborhood Services has an ongoing need to provide weed mowing and trash removal services (abatement services) as required through December 31, 2020.

Keesen Landscape is the current provider for weed mowing and trash removal services (abatement services). There are currently no option years to extend with Keesen and the service must be competitively bid. Since this is the peak season for abatement services, the department is requesting an interim (temporary) award to Keesen through December 31, 2020. This service will be competitively bid this fall and when the department is not in their peak season.

Staff contacted Keesen Landscape Management for their pricing, and Keesen's rates will remain unchanged from the existing contract rates. Given that the May 2020 Denver Consumer Price Index has increased 1.9% since this time last year, the contractor's pricing is considered to be fair and reasonable.

The amount of this interim award is appropriate to be presented to City Council.

Based on the above, it is staff's recommendation to award a single source contract (interim award) to Keesen Landscape Management, Inc., Englewood, Colorado in the amount not-to-exceed \$210,000.00 for weed mowing and trash removal services (abatement services) as required through December 31, 2020.

This service will be competitively bid and a new award will be in place by December 31, 2020.

QUESTIONS FOR Committee

Does Council approve the single source award to Keesen Landscape, Incorporated in the amount not-to-exceed \$210,000.00 for trash removal and weed services (abatement services)?

LEGAL COMMENTS

Purchase orders or contracts in any amount may be awarded without benefit of formal competitive bidding when a vendor offers to extend an existing contract under the same conditions and at the same or lower price (adjusted for inflation), and such extension is in the best interests of the City (City Code § 2-674(2), and City Code Section 2-672(a)(4)). Purchase orders and contracts worth \$50,000 or more not awarded pursuant to formal competitive bidding require City Council approval (City Code § 2-672(a)(3)(b)). (Lathers)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

Funding for this contract will come from the Abatement org in an amount not-to-exceed \$210,000.00.

ORG USED: Abatement Services

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

N/A

EXHIBITS ATTACHED:

Minutes May 20, 2019.pdf
Weekly Rpt March 9, 2020.pdf

AWARDS \$25,000.00 - \$49,999.99 subject to call-up: (Continued)

COMPANY	DESCRIPTION OF AWARD	AWARD AMOUNT	BID NUMBER
<p>GROUNDS SERVICE COMPANY</p> <p>DENVER, CO</p> <p>Dept: PROS</p>	<p>Extend a competitively bid contract for mowing services, including trimming and edging, for seven (7) City greenbelts totaling approximately 22 acres. Services are to be performed on a weekly basis from the third full week in April through the third full week in October and will include one aeration and one fertilization of turf grass. This award represents the second and final extension year of a possible three-year contract.</p> <p>Grounds Service renewal pricing reflects a 2.9% increase over the second year. Although the municipal cost index is only up 1.64% year-to-year ending January 2020, Ground Service renewal price remains 7.6% lower than the next low bidders second option year bid price. Therefore, pricing is considered to be fair and reasonable.</p> <p><i>Purchases where a vendor offers to extend an existing contract under the same terms and conditions within current market pricing are authorized to be awarded through noncompetitive negotiations. 2-674-2</i></p>	<p>\$40,895.00</p>	<p>B-4402</p>
<p>NATIONAL COATINGS & SUPPLY</p> <p>DENVER, CO</p> <p>Dept: Public Works/Fleet</p>	<p>Extend a competitively bid contract for the purchase of body shop paints and related supplies as required for repair and maintenance of City vehicles through February 28, 2021. This award represents the second and final extension year of a possible three-year contract.</p> <p>Due to the difficulties of soliciting bids based on firm fixed unit prices for many different tints and types of finishes, bidders were requested to propose discounts off the manufacturer's nationally published price list. National Coatings & Supply proposed renewal price discounts between 18.9% and 31.2% for paints and related supplies (primers/sealers, clear coat, reducers, activators) and 28% off for sprayer tools. Of the twenty renewal discounts proposed, three remained the same as the second year of the award, ten increased between 2.8% and 3.2%, and seven decreased between -0.10% and -3.2%. Given the producer price index (PPI) has increased by 2.4% year-to-year ending January 2020, pricing is considered to be fair and reasonable.</p> <p><i>This award is within the dollar amount required to be entered on the Weekly Report consistent with Code 2-672-(a), (2) on purchases less than \$50,000.</i></p>	<p>NOT-TO-EXCEED</p> <p>\$45,000.00</p>	<p>B-4395</p>

Barbara Niederhoff, Aurora Moms Demand Action for Gun Sense in America, discussed the proclamation and the need to recognize victims of gun violence.

Kate Rothgeb, Aurora Moms Demand Action for Gun Sense in America, discussed her disappointment that Mayor LeGare denied the proclamation request and expressed her concerns related to growing gun violence in the City.

Jamie Logan, Aurora Moms Demand Action for Gun Sense in America, discussed her disappointment in the proclamation request denial, the need to recognize victims of gun violence and the increase in gun violence in Colorado.

Andrea Herbert, Aurora Moms Demand Action for Gun Sense in America, discussed her children's experience with lockdowns in their schools and the increase of gun violence in Aurora.

Abbey Winter, Aurora Moms Demand Action for Gun Sense in America, discussed her experiences with gun violence as a teacher.

Misty Glover, Aurora Moms Demand Action for Gun Sense in America, discussed her disappointment in the Mayor's denial of the proclamation request and the increased gun violence in Aurora.

Jessica Price, Aurora Moms Demand Action for Gun Sense in America, read the National Gun Violence Awareness proclamation aloud. She asked those present who supported the proclamation to stand.

Council Member Johnston expressed appreciation to the Aurora Moms Demand Action members for attending the meeting and stated her intent to move forward with this important issue.

Alison Coombs discussed health and safety issues vital to the City of Aurora and echoed previous comments regarding the City's responsibilities to its citizens regarding Oil and Gas and the passing of SB 181.

Council Member Bergan stated she was never approached or made aware of the proclamation or the Mayor's decision in that regard.

8. **ADOPTION OF THE AGENDA**

The agenda was adopted as presented with the deferral of item 13g.

9. **CONSENT CALENDAR - 9a-i**

General Business

- a. Consideration to EXTEND A COMPETITIVELY BID CONTRACT with Keesen Landscape Management, Inc., Englewood, Colorado in the not-to-exceed amount of \$210,000.00 for Weed Mowing and Trash Removal Services (Abatement Services) as required through March 31, 2020, B-4205. STAFF SOURCE: Malcolm Hankins, Director, Neighborhood Services
- b. Consideration to AWARD A COMPETITIVELY BID CONTRACT to Revolution Foods, Commerce City, Colorado in the amount of \$105,000.00 for providing food vendor services for the 2019 Summer Food Program, B-4413. STAFF SOURCE: Keith Bailey, Acting Manager of Recreation, Parks, Recreation & Open Space

- ◆ ***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.***

- c. Consideration to AWARD CHANGE ORDER No. 3 to a competitively bid contract with Musco Sports Lighting, LLC, Oskaloosa, Iowa in the amount of \$49,027.00 for the Olympic Park Lights Project, Project Number 5656A. STAFF SOURCE: Tracy Young, Planning, Design, Construction Manager, Parks, Recreation & Open Space
- d. Consideration to AWARD A COMPETITIVELY BID CONTRACT to American West Construction, LLC., Denver, Colorado in the amount of \$5,641,000.00 for the Harvest Road Improvements - North of Orchard Project. **(Staff Requests a Waiver of Reconsideration)** STAFF SOURCE: Matthew Kozakowski, Acting Transportation Project Delivery Manager, Public Works
- e. Consideration to AWARD AN OPENLY SOLICITED CONTRACT to Veolia ES Technical Solutions, Henderson, CO in the amount of \$61,345.38 for hazardous waste collection, transport, and disposal services at the Household Chemical Roundup Event on September 7, 2019. (R-1965) STAFF SOURCE: Sean Lieske, Environmental Permitting Manager, Aurora Water
- f. Consideration to AWARD A SOLE SOURCE CONTRACT to West Safety Solutions Corp., Longmont, Colorado in the amount of \$255,335.50 to upgrade hardware and software for the City's 911 answering system in the main and backup communication centers. STAFF SOURCE: Aleta Jeffress, Chief Information & Digital Officer, Information Technology
- g. Consideration to AWARD WORK PACKAGE NO. 2 of the Tollgate Creek Confluence Project, Project No. R-5669A, to Concrete Express, Inc., Denver, Colorado in the amount of \$4,674,178.21. STAFF SOURCE: Sarah Young, Water Planning Services Manager, Aurora Water

Motion by Bergan, second by Berzins, to approve items 9a – 9g with a waiver of reconsideration on 9d.

Council Member Watson stated he did not pull item 9b because it was something Council would vote on regardless, however he pointed out it was another situation where a contract was being renewed with Commerce City to provide food in City parks rather than utilizing companies in Aurora.

Voting Aye: Mayor Pro Tem Roth, Bergan, Berzins, Hiltz, Johnston, Lawson, Murillo, Richardson, Watson

Final Ordinances

- ◆ h. **2019-17**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, appropriating sums of money in addition to those appropriated in ordinance Nos. 2017-50, 2018-15, and 2018-63 for the 2018 fiscal year and Ordinance No. 2018-56 for the 2019 fiscal year. STAFF SOURCE: Jackie Ehmann, Budget Finance Program Manager, Finance

Motion by Bergan, second by Richardson, to approve item 9h.

Voting Aye: Mayor Pro Tem Roth, Bergan, Berzins, Hiltz, Johnston, Lawson, Murillo, Richardson, Watson

- ◆ i. **2019-18**
Consideration of AN ORDINANCE FOR ADOPTION of the City Council of the City of Aurora, Colorado, amending Sections 94-313 and 94-61 of the City Code related to alcohol and glass bottles in public places or parks. STAFF SOURCE: Patricia Schuler,

- ◆ ***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 #: 9e
 SS: _____
 1st: _____
 2nd: _____

Item Title: Consideration to APPROVE THE PURCHASE of 119 share of stock in the Whitney Ditch Company from BCI Waterco LLC and an affiliated water pipeline easement from GWIP LLC, for \$26,881,719.75, by the City of Aurora, acting by and through its Utility Enterprise.
Item Initiator: Gallen, Daniel - Water Resource Specialist - Aurora Water
Staff Source: Jewell, Dawn - S Platte Basin Supv - Aurora Water
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 3.3--Pursue a water resource aquisition and delivery plan

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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 December 8, 2003, City Council approved a resolution ratifying, affirming, and declaring the City of Aurora's Intent to appropriate and to put to beneficial use, water rights and water storage rights in the South Platte River basin.

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

The City through the Water Department currently owns no shares in the Whitney Ditch Company. The purchase of these 119 shares is consistent with the Water Department’s acquisition plan. The Whitney Ditch Company is within the geographic area of the South Platte River Basin, specifically residing on the Cache La Poudre tributary. The service area of the Whitney Ditch Company is generally located northwest of the South Platte River near the city of Windsor, in Weld County, Colorado. The purchase price is \$26,881,719.75. The purchase price includes the acquisition of 119 shares of company stock, the dry up covenants for approximately 1,100 acres of the historically irrigated land and a water pipeline easement. Of note, these shares have undergone change in use water court proceedings; 105 shares in Case No. 08CW65 and the remaining 14 shares in Case No. 13CW3167. Pursuant to the C.R.S. the Consumptive Use (CU) yields for the 119 shares have been memorialized in the above cases. Accordingly, these 119 shares have an average yield of 1,629.0 acre-feet of CU water. Staff has also negotiated a Water Pipeline Easement agreement from GWIP LLC, which is needed for the future installation of a 36” raw water pipeline to operate the Whitney Ditch Company water rights. These water rights and affiliated future infrastructure can be used to meet the obligations of the City's future water demands. The water constitutes a portion of the additional water supply identified as necessary to meet the City’s future water needs and will also benefit the City by providing additional yields during periods of drought. Staff negotiated the proposed contract for the purchase of these shares from BCI

Waterco LLC and the affiliated water pipeline easement from GWIP LLC. The transaction will close, subject to Council approval, approximately August 31, 2020. Before the water represented by the subject shares can be used by the Water Department for municipal purposes, the Water Department will need to amend the location of use defined in the Water Court decrees from the cases listed above. Until that time, the ditch shares will be leased back to current ditch shareholders for the cost of the annual share assessment so the water rights can continue to be used for agricultural crop production.

QUESTIONS FOR Committee

Does Council support the proposed purchase of 119 shares of the Whitney Ditch Company Stock and affiliated water pipeline easement for the purchase price of \$26,881,719.75?

LEGAL COMMENTS

Pursuant to City Council Resolution No. R2016-52, the City Manager and the Director of Water are authorized to implement and carryout the 2016 Water Policies that includes water acquisition of surface water supplies as the primary source of existing and future water supplies for the City. Pursuant to Administrative Policy Memorandum No. 4-14, water purchase contracts for transactions of \$1 million and above are to be signed by the Mayor after Council approval. (Neitzel)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

Funding for this purchase will be from the Capital Improvement Program, Water Fund, in the amount of \$26,881,719.75. A budget supplemental will be completed to cover the overage.

ORG USED: Water Rights Acquisition WA (52381)

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

N/A

EXHIBITS ATTACHED:

1. Purchase and Sale Whitney Ditch Company Stock and Water Pipeline Easement.pdf
2. General Location Map.pdf
3. 12-8-2003 Council Results.pdf

Contract for Purchase of Irrigation Company Stock

This Contract for Purchase of Irrigation Company Stock (“**Contract**”) is entered into and effective as of the Effective Date (as defined in Section 38 below) by and between BCI Waterco, LLC, a Colorado limited liability company whose principal place of business is located at 252 Clayton Street, 4th Floor, Denver, CO 80206 (“**Seller**”), and the City of Aurora, Colorado, a Colorado home-rule municipal corporation of the counties of Adams, Arapahoe, and Douglas acting by and through its Utility Enterprise, whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555 (“**Buyer**”). Seller and Buyer shall be referred to herein as “**Party**” and collectively as “**Parties**.”

Recitals and Representations

WHEREAS, Seller represents that it is the owner of unencumbered marketable title to one hundred and eighteen (118) shares of stock in The Whitney Irrigation Company (“**Ditch Company**”), as represented by Share Certificate Number 455 and that it is the beneficial owner of one additional share of the Ditch Company as represented by Share Certificate Number 446 (the “**Director’s Certificate**”) which is held in the name of an employee of an affiliate of Seller (the “**Director**”) for the purposes of enabling Seller, through such employee, to be eligible for representation on the Ditch Company board of directors.

WHEREAS, Seller shall, at the Closing (as defined in Section 5(a) below) cause Share Certificate Nos. 455 and 446 (collectively, the “**Subject Stock**”) to be transferred to Buyer free and clear of any and all encumbrances in accordance with the instruments described in Section 5(b)(ii) below, along with all beneficial right, title, and interest in all water, water rights, ditches, ditch rights, canals, canal rights, headgates, and all other assets, rights, title, or interests represented by the Subject Stock (collectively, with the Subject Stock, the foregoing is hereinafter referred to as the “**Water Rights**”), and

WHEREAS, Seller represents that the historical consumptive use of one hundred five (105) shares of the Subject Stock (including the historical consumptive use of the water associated with the Director’s Certificate) was quantified on a ditch-wide basis and changed for use at certain property known as Great Western Industrial Park, in Windsor, Colorado (the “**Industrial Park**”), such change case was adjudicated in Water Court, Water Division 1, Case No. 08CW65 (“**Case 08CW65**”); and that the historical consumptive use of the remaining fourteen (14) shares of the Subject Stock were quantified on a ditch-wide basis and changed for use at the Industrial Park in Water Court, Water Division 1, Case No. 13CW3167 (“**Case 13CW3167**”); and

WHEREAS, Seller represents and warrants that eight (8) shares of the Subject Stock have been converted to the changed uses permitted under the above-referenced cases (collectively, the “**Water Court Cases**”); and that one hundred eleven (111) shares of the Subject Stock have not been converted to such changed uses and continue to be used for agricultural irrigation of portions of the GWIP Irrigated Land (defined in Section 3(d) below); and

WHEREAS, Seller represents that water derived from the one hundred five (105) shares of Subject Stock that was changed in Case 08CW65 has historically been used for agricultural irrigation of 861 acres within the Industrial Park; and that the water derived from the fourteen (14) shares of Subject Stock that was changed in Case 13CW3167 has historically been used for agricultural irrigation of 158.7 acres of real property as identified by parcel in Case 13CW3167 (collectively, the “**Historical Irrigated Land**,” which is depicted on **Exhibit A-1** attached hereto); and

WHEREAS, The Historical Irrigated Land includes 220.5 acres (2.1 acres per share) within the Industrial Park which the Water Court recognized in Case No. 08CW65 as dried-up in fact at the time the decree was entered (“**Dried-Up Historical Land**”). The several dry-up covenants identified on **Exhibit A-2** attached hereto (collectively, the “**Dry-Up Covenants**”) encumber the entirety of the Historical Irrigated Land except for a forty (40) acre portion of the Dried-Up Historical Land; and

WHEREAS, The land encumbered by the Dry-Up Covenants and the Dried-Up Historical Land, together, encompass the entirety of the Historical Irrigated Land and such collective dry-up runs with and benefits the Water Rights; and

WHEREAS, Buyer is a Colorado municipal corporation, and as such has a need and necessity for the Water Rights for the purposes of supplying water for municipal and other uses to the inhabitants of the City of Aurora, Colorado (“**City**”) and others; and

WHEREAS, Buyer is desirous of purchasing the Water Rights, certain additional rights with respect to Historical Irrigated Land and the Easement Agreement as provided for in this Contract and Seller is desirous of selling the same to Buyer; and

WHEREAS, as a material condition of Buyer’s purchase of the Water Rights, Buyer requires from Seller and Seller desires to provide to Buyer upon the terms and conditions hereinafter described, cooperation in Buyer’s subsequent water court application to further change the Water Rights for Buyer’s intended uses (“**Buyer’s Change Case**”).

NOW THEREFORE, in consideration of the foregoing recitals and representations and in consideration of the covenants, promises, payments and agreements herein set forth the adequacy, sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Sale and Purchase. In consideration of the Purchase Price (defined below) and subject to all other terms and conditions hereinafter provided, Seller hereby agrees to (i) sell to Buyer the Water Rights, assignments of the Dry-Up Covenants, and an assignment of the first and paramount right to claim the dry up represented by the 220.5 acres of Dried-Up Historical Land; (ii) cooperate with Buyer in Buyer’s Change Case at no cost or expense to Seller, in accordance with Seller’s Covenants of Cooperation set forth in Section 14 below; (iii) cause its affiliates GWIP, LLC, a Colorado limited liability company (“**GWIP**”) and Great Western Railway of

Colorado, LLC, a Colorado limited liability company (“**GWR**”) to deliver the Dry-Up Modifications as provided for in Section 7(b) below; and (iv) cause GWIP to deliver the Easement Agreement as defined and provided for in Section 10; and (v) cause GWIP to deliver the Water Court Agreement as provided for in Section 9.

2. Purchase Price. The “**Purchase Price**” the sum of: (a) Three Hundred Eighty One Thousand Seven Hundred Nineteen Dollars and Seventy Five Cents. (\$381,719.75) attributable to the Easement Agreement; plus (b) Twenty-Six Million Five Hundred Thousand Dollars (\$26,500,000.00) attributable to all other assets, agreements and covenants granted hereunder, including the Water Rights.
3. Inspection Period, Feasibility Studies and License to Enter.
 - (a) Buyer’s obligation to proceed to Closing under this Contract is expressly contingent on Buyer’s approval and acceptance, in its sole discretion, of the condition of the Water Rights and the feasibility of Buyer’s anticipated use of the Water Rights which includes, but is not limited to Buyer’s review of the Property Documents (as defined in Section 14(i) below).
 - (b) Buyer shall have the period commencing on the Effective Date and continuing through 11:59 p.m. on the fifth (5th) business day following the City Council Approval (as defined in Section 36 below) (“**Inspection Period**”) to determine the suitability of the Water Rights for Buyer’s intended use.
 - (c) If for any reason, or no reason, Buyer determines in Buyer’s sole discretion that the Water Rights or the Dry-Up Covenants are not suitable for Buyer’s intended use, Buyer may terminate this Contract at any time on or before the expiration of the Inspection Period by delivering written Notice (as defined in and in accordance with Section 16 below) of termination to Seller, in which event the Parties shall have no further obligations or liabilities hereunder, except for those which expressly survive termination of this Contract.
 - (d) Buyer’s approval and acceptance of the Water Rights shall be conclusively established if Buyer fails to terminate the Contract before expiration of the Inspection Period. Accordingly, if Buyer does not provide Notice to Seller of Buyer’s termination of this Contract prior to the expiration of the Inspection Period, Buyer is deemed to have waived its right to terminate the Contract pursuant to this Section.
 - (e) Seller represents that except for the parcels shown on Exhibit A-1 to be owned by parties other than GWIP, GWIP owns the entirety of the Historical Irrigated Land within the Industrial Park that is covered by and subject to the Dry-Up Covenants (“**GWIP Irrigated Land**”).

(f) By its execution of the acknowledgement attached hereto, GWIP represents that it owns the GWIP Irrigated Land and hereby grants to Buyer the license provided for below (the “**License**”).

(i) The License shall be effective from the Effective Date through the Closing Date; and provides for Buyer and Buyer’s agents or independent contractors to enter upon the GWIP Irrigated Land for the purposes of performing surface-to-groundwater measurements, ditch water quality tests, land surveys of GWIP Irrigated Land, and other reasonable investigations concerning the Water Rights and the GWIP Irrigated Land as are reasonably required by Buyer to investigate the suitability of the Water Rights for Buyer’s intended purposes (collectively, “**Investigations**”). Buyer’s completion of any such Investigations shall not constitute a waiver of any of Seller’s representations or warranties contained herein.

(ii) Buyer shall give Seller at least forty-eight (48) hours’ prior notice before accessing the GWIP Irrigated Land to conduct Investigations which notice may be given by e-mail notice to the following e-mail addresses: jbock@broe.com; dbrown@broerealestate.com; and ggallagher@broe.com. Such notices shall also describe the type of Investigations to be performed with sufficient detail to enable Seller to make an informed decision regarding protocol in accordance with this Section 3(f). Seller and GWIP shall have the right to be present during any such entry and observe the Investigations being conducted.

(iii) Buyer agrees that it shall not disclose the purpose of its entry to any third parties who may be present upon the land at the time of entry pursuant to this License. Buyer shall not disrupt or interfere with any farming, business or other operations on the GWIP Irrigated Land on which such Investigations are conducted. Buyer agrees not to damage or destroy any crops in the course of entering upon and conducting Investigations upon GWIP Irrigated Land except as otherwise identified in the protocol agreed to for such access.

(iv) Buyer agrees to observe reasonable protocol for such entry as may be requested by GWIP or Seller in order to minimize or avoid any such disruption or damage and in order not to draw undue attention to the entry for confidentiality purposes, including to the extent reasonably feasible, conducting the Investigations on dates and at times reasonably requested by Seller or GWIP to minimize interference with GWIP activities, conducting the Investigations on portions of the GWIP Irrigated Land reasonably requested by Seller or GWIP, to the extent such requests do not unduly restrict

Buyer in the gathering of information important to Buyer's Investigations, and allowing representatives of GWIP or Seller to show Buyer's representatives around to the agreed-upon portions of the GWIP Irrigated Land on which such Investigations are to be conducted.

- (v) Buyer shall not (i) conduct any invasive testing on the GWIP Irrigated Land without Seller's and GWIP's prior consent; (ii) damage or destroy any crops; or (iii) permit any lien (including mechanic's and materialmen's liens) to attach to GWIP or the GWIP Irrigated Land as a result of Buyer's entry onto and Investigations conducted on the GWIP Irrigated Land; and Buyer shall promptly discharge any such lien filed against GWIP or the GWIP Irrigated Land.
- (vi) Buyer shall (A) promptly refill holes dug or bored on the GWIP Irrigated Land (B) restore the GWIP Irrigated Land to its condition existing immediately prior to Buyer's entry thereon, and otherwise repair any damage to the GWIP Irrigated Land as a result of the entry onto the GWIP Irrigated Land by Buyer, its employees, agents, independent contractors and representatives; and (C) be solely responsible for the costs of any such entry, tests, surveys, studies, analyses and other investigations and restoration.
- (vii) Buyer shall cause its consultants and contractors seeking access to the GWIP Irrigated Land to provide reasonable evidence of liability insurance reasonably acceptable to Seller and GWIP and naming Seller and GWIP as additional insureds, insuring against losses arising from Buyer's exercise of the License.
- (g) Seller as a shareholder of the Ditch Company shall obtain and deliver to Buyer such records of the Ditch Company as relates to the ownership and status of the Subject Stock as Buyer shall reasonably request and as Seller may feasibly obtain, subject to the Ditch Company policies and within a reasonable time after the request of Buyer. The Parties agree to confer with and reasonably work with one another to determine the information, approach and protocol in regard to information to be sought from the Ditch Company in the interests of maintaining the confidentiality of the subject transaction and the confidentiality of the purposes for which such information may be sought.

4. Title and Title Review.

- (a) The Parties agree that in order to consummate the transaction contemplated by this Contract, title to the Subject Stock must be unencumbered and marketable in Seller so the Subject Stock may be delivered free, clear and unencumbered in any way to Buyer. Buyer's obligations under this Contract are specifically

conditioned and contingent on clear and unencumbered title to Buyer being conveyed at Closing.

- (b) Seller represents that it is the beneficial owner of the Director's Certificate; and Seller agrees that the Director's Certificate shall be conveyed to Buyer at Closing with free, clear and unencumbered title.
- (c) The Parties further agree that each of the Dry-Up Covenants must have been validly granted by the applicable grantor or declarant holding sufficient right, title and interest in the applicable portions of the Historical Irrigated Land to grant the respective Dry-Up Covenants subject only to those matters of title accepted by Buyer in accordance herewith.
- (d) Buyer agrees it will be responsible for the costs of any evaluation of any materials necessary to determine the status of the title to the Subject Stock and the Dry-Up Covenants; and that such evaluations will be concluded during the Inspection Period, subject to the procedures for extending the Inspection Period in connection with an applicable "Cure Period," or an "Updated Commitment" and "New Exceptions" as those terms are defined and set forth below.
- (e) Notwithstanding any other provisions of this Contract if as of the Closing Date (as defined in Section 5(a) below) Seller does not have such free, unencumbered and marketable title in the Subject Stock or if any of the Dry-Up Covenants were not validly granted as required in this Contract or if GWIP or GWR does not have sufficient title to grant the Dry-Up Modifications, Buyer may either: (i) terminate this Contract; (ii) proceed to Closing and waive such defects; or (iii) extend the Closing Date for an additional ten (10) days in order to allow Seller to cure such defect; provided that, if Seller does not so cure such defect, Buyer may elect to proceed under (i) or (ii) of this subsection.
- (f) Buyer may elect to obtain a current title insurance commitment ("**Commitment**") for an American Land Title Association ("**ALTA**") easement holder's policy ("**Title Policy**"), written by the Title Company (as defined in Section 5(a) below) in the amount of the Purchase Price, agreeing to insure good and marketable title in the easement interest created by the Dry-Up Covenants, the Dry-Up Modifications and the Easement Agreement.
 - (i) If Buyer does elect to obtain a Commitment, Buyer may during the Inspection Period give written Notice to Seller of its disapproval of any matter contained in the Commitment (an "**Objection Notice**"), in which case Seller shall have fifteen (15) days ("**Cure Period**") from the receipt of such Objection Notice to cure the objections or defects so specified, or notify Buyer in writing that it does not intend to cure some or all of such objections. Any Cure Period that expires after the expiration of the Inspection Period then in effect

shall automatically extend the Inspection Period to and including one (1) day following the Cure Period.

(ii) If Seller does specify within the Cure Period that it will cure any or all of the matters identified in the Objection Notice, then Seller shall perform such cure on or before the Closing Date. If Seller does not respond to Buyer's Objection Notice within the time period provided above it will be deemed to have elected not to cure any such objections. If Seller does not specify within the Cure Period that it will cure all of the matters identified in the Objection Notice, then Buyer may in its sole discretion terminate the Contract by providing Notice of such termination prior to Expiration of the Inspection Period.

(iii) If Buyer elects to obtain a Commitment, Buyer may cause the Commitment to be updated and issued by the Title Company not later than seven (7) days prior to the Closing ("**Updated Commitment**"). Buyer shall, within three (3) business days following receipt of an Updated Commitment provide an Objection Notice to Seller of any unacceptable exceptions on such Updated Commitment that were not included on the initial Commitment and that could adversely affect Buyer's right to enforce a Dry-Up Covenant or easement rights appurtenant thereto ("**New Exceptions**").

(1) Each such New Exception for which Objection Notice is provided shall be considered an impermissible encumbrance on the Dry-Up Covenants unless timely cured by Seller.

(2) Any Objection Notice regarding any New Exceptions that is provided to Seller ten (10) days or less before Closing, shall automatically extend Closing by ten (10) days.

(3) Seller shall have three (3) business days from the receipt of an Objection Notice related to New Exceptions in order to cure the objections, or notify Buyer in writing that it does not intend to cure some or all such objections.

(4) In the event any such objections to New Exceptions are not timely cured, Buyer shall have the right, in its sole discretion to either: (i) terminate this Contract; or (ii) proceed to Closing and waive such objections.

5. Closing.

(a) Closing Date. The closing on this Contract ("**Closing**") shall occur not later than twenty (20) business days following the end of the Inspection Period,

subject only to extensions as provide herein or by amendments hereto, and on a date and at a time as mutually agreed to by the Parties (“**Closing Date**”). Closing shall occur at the offices of Land Title Guarantee Company at 195 Telluride Street, Suite 10, Brighton, CO 80601 or such other company as selected by Buyer (“**Escrow Agent**” and “**Title Company**”) or such other escrow agent or title company as the Parties may mutually agree.

(b) Closing Deliveries.

(i) At Closing, Buyer shall deliver or cause to be delivered to Escrow Agent:

(1) The Purchase Price;

(2) An executed counterpart of the Water Use Agreement (as defined in Section 8 below);

(3) The premium for any Title Policy, provided that Buyer elects to obtain the Title Policy; and

(4) Such affidavits, instruments, agreements or other documents as may reasonably be required to complete the transactions contemplated under this Contract and/or satisfy the Title Company's requirements for issuance of a Title Policy.

(ii) On or before the Closing Date, Seller shall deliver to the Escrow Agent each of the following items (Numbers 2 through 6 shall be duly executed as required under this Contract):

(1) The original certificate(s) for the Subject Stock;

(2) Two (2) deeds for the Water Rights, a quit claim deed from the Director to Seller for the Director’s Share; and a special warranty deed from Seller to Buyer for all of the Subject Stock, substantially in the form attached hereto as **Exhibit C-1** and **Exhibit C-2** (the special warranty under the deed from Seller to Buyer for all of the Subject Stock shall cover the period of ownership of the Director’s Certificate by the Director);

(3) Two (2) stock assignment agreements for the Subject Stock, one stock assignment from the Director to the Seller for Certificate No. 446; and one (1) stock assignment from Seller to Buyer, for Certificate Nos. 446 and 455, in forms mutually agreed upon by the Parties and acceptable to the Ditch Company, which assignments shall include the appointment of an officer of the Ditch Company as attorney-in-fact with authority to change the ownership records of the Ditch Company with respect to the Subject Stock, all in the in the forms attached hereto as **Exhibit D-1** and **Exhibit D-2**;

(4) The Dry-Up Assignments as defined under Section 7(a) below and as required under this Contract;

(5) The Dry-Up Modifications as defined under Section 7(b) below duly executed by and on behalf of GWIP or GWR (as applicable) and as required under this Contract;

(6) The Easement Agreement as defined and provided for under Section 10 below;

(7) The GWIP Water Court Agreement as defined and provided for under Section 9 below;

(8) The BREG Guaranty as defined and provided for under Section 13(g) below;

(9) Competent proof in forms acceptable to Buyer and approved during Buyer's Inspection Period that (A) all assessments due with respect to the Subject Stock are paid in full; and (B) the Subject Stock is validly issued and outstanding in the name of Seller.

(10) A counter part of the Water Use Agreement as defined and provided for in Section 8 below, duly executed by GWIP; and

(11) Such affidavits, instruments, agreements or other documents as may reasonably be required to complete the transactions contemplated under this Contract and/or satisfy the Title Company's requirements for issuance of the Title Policy.

(iii) Each Party shall further execute and deliver such documentation as may be reasonably requested by Escrow Agent or Title Company.

6. Ditch Assessments. Seller agrees to fully pay and continue to pay, or cause to be paid, any and all ditch assessments associated with and accruing to the Subject Stock through and including the Closing Date.

7. Dry-Up Covenants.

(a) Seller shall deliver to Buyer at Closing assignments of Dry-Up Covenants and Easements, assigning to Buyer all of Seller's interests in the Dry-Up Covenants, substantially in the forms attached hereto as **Exhibit B-1** through **Exhibit B-4** ("**Dry-Up Assignments**").

(b) Seller shall cause GWIP and GWR to deliver duly authorized and executed modifications of the existing Dry-Up Covenants substantially in the forms attached hereto as **Exhibit B-5** and **Exhibit B-6** ("**Dry-Up Modifications**"), which shall include GWIP's assignment of the first and paramount right to claim dry-up of the Dried-up Historical Land.

8. Water Use Agreement. Buyer shall enter into a Water Use Agreement with GWIP for GWIP's use of a portion of the Water Rights derived from one hundred eleven (111) of the Subject Shares ("**Leased Shares**") that were changed in 08CW65, substantially in the form of the Water Use Agreement attached hereto as **Exhibit E** ("**Water Use Agreement**"). Aurora reserves the right to allocate

specific shares from among the Leased Shares for use on specific portions of the Historical Irrigated Land as may be required under the Water Court Cases.

9. GWIP Water Court Agreement. Seller shall cause GWIP to deliver a duly authorized and executed agreement committing GWIP to remove the Water Rights from the approved sources of augmentation under that certain Water Court, Water Division 1, Case No. 07CW326 and to cooperate with Buyer in Buyer's Change Case at no cost or expense to GWIP, substantially in the form attached hereto as **Exhibit F ("GWIP Water Court Agreement")**.
10. Easement Agreement. Seller shall cause GWIP to deliver a duly authorized and executed easement agreement for a water pipeline, substantially in the form attached hereto as **Exhibit G ("Easement Agreement")**.
11. Commissions. The Parties represent and warrant to each other that they have not engaged any broker or finder in connection with the transactions contemplated under this Contract and that no real estate or other commissions shall be incurred in connection with the transactions contemplated under this Contract. Seller agrees to indemnify and hold Buyer harmless from the claims of any person or entity for real estate commissions, finder's fees, or any similar fees in connection with the transactions contemplated under this Contract.
12. Closing Costs.
 - (a) Buyer shall pay the transfer costs, if any, imposed by the Ditch Company with respect to the transfer of the Subject Stock.
 - (b) The Parties will each pay one-half of the closing costs of the Escrow Agent and applicable recording costs.
 - (c) If Buyer elects to obtain a Title Policy, the premium for the Title Policy shall be paid by Buyer.
13. Timely and Effective Stock Transfer. The transfer of the Subject Stock from Seller's name to Buyer's name on the books and records of the Ditch Company as contemplated herein, including cancellation of Stock Certificate No. 455 for one hundred eighteen (118) shares and Stock Certificate 446 for one (1) share and the issuance of a new stock certificate or certificates in the name of Buyer for said one hundred nineteen (119) shares ("**Stock Transfer**") shall be timely and effective. Seller agrees to the following exclusive remedies for Buyer in connection with a failure of a Stock Transfer for all or any of the Subject Stock. The remedies provided for under this Section shall not limit any of Seller's warranties in this Contract or any of the conveyance documents delivered at the Closing, including Seller's warranties of title (collectively, "**Seller's Warranties**"), except as specifically provided for below.

- (a) In the event the Ditch Company delays the Stock Transfer with respect to any or all of the Subject Stock for ninety (90) days or more from the date the original certificates for the Subject Stock and the stock assignments referenced in Section 5(b)(ii) are delivered to the Ditch Company (“**Non Transfer**”), then Buyer shall be entitled to provide Seller with a notice (“**Notice of Non Transfer**”) in accordance with Section 16 hereof at any time prior to the completion of the Stock Transfer for all of the Subject Stock. Seller shall have sixty (60) days after receipt of such Notice of Non Transfer (“**Response Period**”) to: (i) cure the default by causing the Ditch Company to effect the Stock Transfer; or (ii) if the Ditch Company has not identified a defect of or encumbrance on Seller’s title to the applicable Subject Stock as the reason for such failure, file and prosecute with diligence a suit against the Ditch Company in Weld County District Court at Seller’s sole cost and expense, to compel the Ditch Company to effect the Stock Transfer; or (iii) if the Ditch Company has identified a defect of or encumbrance on Seller’s title to the applicable Subject Stock as the reason for such failure, file and prosecute with diligence a suit against any and all persons or entities necessary to clear title to the applicable Subject Stock (which may include the Ditch Company) or, if Buyer and Seller agree that the Ditch Company has improperly identified an adverse claim or encumbrance of Seller’s title to the applicable Subject Stock, against the Ditch Company, in Weld County District Court at Seller’s sole cost and expense, to clear any such claim or encumbrance and cause the Ditch Company to effect the Stock Transfer. Any litigation commenced under either subsection (ii) or (iii) of this Section 13(a), a “**Transfer Litigation**”.
- (b) In such Response Period (i) if such Stock Transfer is not effected or (ii) if Seller does not file and prosecute the Transfer Litigation as provided above, then Buyer may as its exclusive remedy rescind this Contract with respect to all or any part of the Subject Stock for which a Stock Transfer has not occurred (“**Rescission**”) by giving notice of such rescission in accordance with Section 16 hereof (“**Rescission Notice**”).
- (c) In the event Buyer elects to exercise its right of Rescission with respect to all or any part of the Subject Stock for which a Stock Transfer has not occurred, the Parties will cause, within twenty (20) days after the Rescission Notice, all things of value delivered or conveyed by one Party to the other at Closing to be returned or re-conveyed to the delivering or conveying Party subject to proration of the returned value if the Rescission applies to less than all of the Subject Stock including: (i) Seller shall return to Buyer the Purchase Price attributable to the applicable Subject Stock with an equal value attributed to each share of Subject Stock in the amount of \$222,689.07 per share, without offset for prorations made at Closing; (ii) the Water Use Agreement and the Water Court Agreement shall be amended to exclude any part of the Subject Stock for which the Rescission has been effected (or terminated if all of the Subject Stock is affected); (iii) Buyer shall deliver a quit claim deed to Seller reconveying the Water Rights attributable to the Subject Stock for which the

Rescission has been effected to Seller; (iv) the stock assignments attributable to the Subject Stock for which the Rescission has been effected shall be deemed null and void; and (v) Buyer shall assign to Seller its interest in the Dry-Up Covenants attributable to the Subject Stock for which the Rescission has been effected. It is the intent of the Parties that in the event of a Rescission, Buyer and Seller shall each be returned to the *status quo ante* position they were each in on the day before Closing and the Parties shall execute such documents as may be necessary to effect such outcome and the Rescission.

- (d) If Seller does file and prosecute the Transfer Litigation within the Response Period, then the final non-appealable outcome or final settlement of such litigation shall determine whether the Buyer has any right to Rescission in connection with Buyer's Notice of Non Transfer. If the Ditch Company is compelled by final non-appealable Court Order or agrees pursuant to a final settlement to effect the Stock Transfer and does so effect the Stock Transfer, then Buyer shall not be entitled to deliver a Rescission Notice with respect to any Subject Stock issued pursuant to such Stock Transfer and shall have no right of Rescission with respect to such issued Subject Stock. In the event of any other final non-appealable outcome in such litigation, Buyer shall be entitled to exercise its Rescission right by delivery of a Rescission Notice.
- (e) Notwithstanding subparagraph (d) above, Buyer shall have a right of Rescission and may deliver a Rescission Notice after the passage of one year following the filing the complaint that initiates the Transfer Litigation, if Buyer determines in its sole and exclusive discretion that by the mere passage of time following Closing without the Stock Transfer being effected, that it has been denied the benefit of its bargain under the Contract and it desires not to await final outcome of the Transfer Litigation.
- (f) Rescission shall be Buyer's sole and exclusive remedy in the event of a Non Transfer with respect to any or all of the Subject Stock. Buyer shall not be required to exercise its right to Rescission with respect to any other breach by Seller hereunder and nothing in this Section 13 shall constitute a waiver or release of any of Seller's Warranties with respect to a third party claim against title to any of the Subject Shares notwithstanding a completion of a Stock Transfer for such Subject Stock. The terms, rights and obligations of this Section 13 shall survive the Closing.
- (g) As material consideration for Buyer entering into this Contract, Seller shall cause shall cause BREG INVESTMENT HOLDINGS 1, LLC a Colorado limited liability company to deliver a duly authorized and executed limited guaranty for Seller's payment obligations in the event of a Rescission, substantially in the form attached hereto as **Exhibit H** ("**BREG Guaranty**").

14. Seller's Affirmative Covenants, Including Covenants of Cooperation.

- (a) Seller shall reasonably cooperate with Buyer to provide information and records of water use concerning the Water Rights. From and after the Closing Date Seller shall continue to so cooperate and provide information and records in connection with Buyer's Change Case and with any approvals required of the Ditch Company in connection with Buyer's Change Case (including any so-called "Catlin" approval requirements), all at no cost to Seller.
- (b) If requested by Buyer, a representative of Seller with knowledge shall testify truthfully on behalf of Buyer at any deposition, motions hearing in, or trial of, Buyer's Change Case, to the extent it is feasible for Seller to assist in providing such testimony.
- (c) Seller on behalf of itself and its officers, directors, employees, agents or any party controlling, controlled by or under common control agrees not to file a statement of opposition to Buyer's Change Case, or any application filed by Buyer to change the Water Rights or to any application to use the Water Rights as an augmentation source or source of exchange.
- (d) Seller shall also cooperate and coordinate with Buyer regarding compliance under the Water Court Cases with respect to the water changed therein and retained by Seller.
- (e) Neither Buyer nor Seller shall object to the removal of the Water Rights as sources of augmentation water under the augmentation plan provided for under Water Court, Water Division 1, Case No. 07CW326, or any amendment of such augmentation plan necessitated by this transaction. Seller shall not object to Buyer's Change Case or any State Engineer proceeding required to permit the Buyer's further change of the place of use for the Water Rights. The Parties shall mutually cooperate in connection with the proceeding described in this Section 14(e).
- (f) Seller's covenants under Sections 14(a) through 14(e) (collectively, "**Seller Covenants of Cooperation**") shall survive the Closing.
- (g) Dealings with Third Parties. From the Effective Date through the Closing Date or earlier termination of this Contract, Seller shall remove the Water Rights from the market for sale, and shall not solicit, seek, accept, entertain, give any information concerning, or enter into any negotiations or agreements with respect to the sale, disposition, or leasing of the Water Rights, or any interest therein, or sell, contribute or assign any interest in the Water Rights.
- (h) New Encumbrances against the Water Rights. From the Effective Date through the Closing Date or earlier termination of this Contract, Seller shall not cause or permit any mortgage, deed of trust, lien, encumbrance, covenant,

condition, restriction, assessment, or liability (“**Title Defect**”) whatsoever to be placed upon or otherwise exist upon the Water Rights, from the Effective Date to the Closing Date or earlier termination of this Contract except as specifically approved in writing by Buyer.

- (i) **Studies and Other Materials.** On the Effective Date, and to the extent not already provided to Buyer, Seller shall provide or make available to Buyer copies or originals of all currently relevant information in any way relating to or concerning the Water Rights and the Dry-Up Covenants which are in the possession or control of Seller and have not been previously provided to Buyer, including, but not limited to, a complete copy of the certificate(s) for the Subject Stock (front and back); and governmental approvals (collectively, “**Property Documents**”). Thereafter, Seller shall promptly provide Buyer with any such additional items or materials, or copies thereof, as may come into Seller’s possession or control.
- (j) Between the Effective Date and the Closing Date, Seller shall promptly (but prior to the Closing) notify Buyer in writing of any fact, event, circumstance or action known to Seller (i) which, if known on the Effective Date, would have been required to be disclosed or (ii) the existence or occurrence of which would cause any of Seller's representations or warranties under this Contract not to be correct and complete. Buyer may elect, within three (3) business days after receipt of such Seller's Notice but prior to the Closing, to terminate this Contract by giving written Notice to Seller.

15. **Additional Representations and Warranties of Seller.** In addition to Seller's other representations and warranties contained in this Contract, Seller hereby represents, warrants, and agrees to the following as of the Effective Date, and on the date of Closing, except as may be caused or created by Buyer.

- (a) Seller affirms the representations including those contained in the Recitals and Representations to this Contract.
- (b) Seller is, or as of the Closing shall be, the sole owner of the unencumbered marketable title to the Subject Stock and the Water Rights.
- (c) Seller has no information or knowledge of any change contemplated in any applicable laws, ordinances, or regulations, or any judicial or administrative action, or any action by adjacent landowners, or natural or artificial conditions upon the Historical Irrigated Land which would prevent, limit or impede Buyer’s development or use of the Water Rights or enforcement of the Dry-Up Covenants.
- (d) To Seller’s best knowledge and belief, Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to and affecting the Water Rights. Performance of this Contract will not result in any

breach of, or constitute any default under, or result in the imposition of, any lien or encumbrance upon the Water Rights under any agreement or other instrument to which Seller is a party or by which Seller, the Water Rights or the Historical Irrigated Land might be bound.

- (e) There are no legal actions, suits or other legal or administrative proceedings, pending or threatened, that affect the Water Rights or any portion thereof, nor has Seller knowledge that any such action is presently contemplated.
- (f) To Seller's actual knowledge, there are no material adverse facts or conditions relating to the Subject Stock, the Water Rights, the Dry-Up Covenants or the Easement that Seller has not disclosed to Buyer.
- (g) Seller is duly organized, existing and in good standing under the laws of the State of Colorado and has not filed, voluntarily or involuntary, for bankruptcy relief within the last year under the laws of the United States Bankruptcy Code, nor has any petition for bankruptcy or receivership been filed against Seller within the last year.
- (h) Buyer is the sole contract purchaser of the Water Rights.
- (i) The person signing below on behalf of Seller is duly authorized to execute this Contract and to bind Seller. Seller further represents that it has capacity to enter into this Contract.
- (j) The execution and delivery of this Contract and the performance of all obligations hereunder by Seller do not and will not require any consent or approval of any third party, and do not and will not result in a breach of, or constitute a default under, any indenture, loan or credit agreement, mortgage, deed of trust or other agreement; and
- (k) Seller has received no written notice of any violations of any law, code, ordinance, rule or regulation or insurance policy affecting the Water Rights.

Each of the warranties and representations contained in this Section and other Sections of this Contract shall be deemed made as of the Effective Date and again as of the Closing Date. Seller's representations and warranties set forth in this Section shall survive Closing and are deemed to be material to Buyer's execution of this Contract and Buyer's performance of its obligations hereunder. All such representations and warranties shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time and shall not be affected by any investigation, verification or approval by any party hereto or by anyone on behalf of any party hereto. Seller agrees to indemnify and hold Buyer harmless from and against any loss, costs, damages, expenses, obligations and reasonable attorneys' fees that are actually suffered or incurred by Buyer arising

out of or by reason of any inaccuracy or breach of any material representations and warranties of Seller hereunder which obligation shall survive the Closing.

16. Notices. All notices, requests, demands, or other communications other than notices related to the License provided for under Section 3(f)(ii) above (collectively, “**Notices**”) hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records, (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 Buyer: City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012-1555
Attn: City Attorney

with copy to City of Aurora
15151 East Alameda Parkway, Suite 3600
Aurora, CO 80012-1555
Attn: General Manager, Aurora Water

with copy to Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202-4432
Attn: Andrew L. Meyers, Esq.

To Seller: BCI WATERCO, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206
Attn: Legal Counsel

with copy to BCI WATERCO, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206
Attn: Greg Gallagher

with copy to Johnson & Repucci LLP
850 W. South Boulder Road, Suite 100
Louisville, CO 80027
Attn: Richard Johnson and Stephen Larson

All Notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this

section, then the first attempted delivery shall be deemed to constitute delivery and the Notice shall be effective.

17. No Warranty Concerning Tax Status. Although this Contract does not contemplate the payment of interest by Buyer, in the event that any interest would be paid, Buyer makes no warranty nor guarantee that any such interest paid as a result of any transaction would be excusable from gross income or federal, state for local income tax purposes.
18. Amendment. This Contract may be modified, amended, changed or terminated in whole or in part only by written agreement duly authorized and executed by each of the Parties with the same formality as this Contract and restating this Contract, as so amended, in its entirety.
19. Waiver. Any waiver of any breach of any provision of this Contract by any Party shall not constitute a continuing waiver of any subsequent breach of said party, for either breach of the same or any other provision of this Contract.
20. Entire Agreement. This Contract 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 Contract.
21. Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Contract.
22. Binding Effect and Assignability. This Contract and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, if any. Seller may not assign its rights or delegate its duties hereunder without the prior written consent of Buyer, which Buyer may withhold in its sole discretion. Any assignment of the Contract by Buyer shall be in writing duly authorized and executed by the Parties with the same formality as this Contract and restating this Contract, as so amended, in its entirety memorialized by a restatement of this Contract in its entirety. Buyer shall be entitled to assign its rights and obligations hereunder only with the consent of Seller.
23. Governing Law and Venue. This Contract 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 Contract, the Parties agree that venue shall be in the District Court for Weld County, Colorado.
24. Survival of Representations. Each and every representation, warranty, covenant, promise, and payment contained in this Contract shall not merge in any deed,

assignment, covenant, escrow agreement, easement, lease or any other document, but shall survive each nevertheless at the Closing, and be binding and obligatory upon each of the Parties.

25. Multiple Originals. This Contract may be simultaneously executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same agreement.
26. Definitions and Interpretations. Except as otherwise provided herein nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law, regulation, rule or document as it may be amended from time to time.
27. No Construction Against Drafter. This Contract has been prepared by the combined efforts of Seller and Buyer and their respective legal counsel as Seller and Buyer so desired, accordingly the Parties agree there shall be no construction against the drafter of this Contract should any dispute arise.
28. Sole Obligation of Utility Enterprise.
 - (a) This Contract shall never constitute a general obligation or other indebtedness of the City of Aurora (the “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 Contract, Seller 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 Contract shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City.
29. Conveyance to City of Aurora. Seller hereby acknowledges and agrees that any deliveries required to be made to Buyer hereunder may, at Buyer's request, be modified to provide for delivery directly to and in the name of the City of Aurora, Colorado.

30. Remedies.
- (a) If Buyer is in default under this Contract or does not proceed to Closing for any reason other than Seller default, then Seller may elect to terminate this Contract or Seller may elect to treat this Contract in full force and effect and have the right to an action for specific performance. Seller hereby expressly waives any other legal remedies, including the remedies of compensatory, consequential or punitive damages.
 - (b) Subject to the exclusive remedy of Rescission in the event of a Non Transfer pursuant to Section 13 hereof, if Seller is in default under this Contract, Buyer may elect to treat this Contract as terminated. Alternatively, Buyer may elect to treat this Contract as being in full force and effect, at its sole option, and may elect to pursue an action for specific performance or damages, but not both; and in no event shall Seller be liable for consequential or punitive damages.
31. No Attorney's Fees and Costs. In the event of any litigation, mediation, arbitration or other dispute resolution proceedings arising out of or related to this Contract, each party agrees to be responsible for its own attorney's fees and other professional fees, costs and expenses associated with any such proceedings.
32. Non-Severability; Effect of Invalidity. Each Section in this Contract is intertwined with the others and are not severable unless by mutual consent of Buyer and Seller or as provided for below. If any provision or portion of this Contract or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable for any reason by a Court of competent jurisdiction, and the basis of the bargain between the Parties is not destroyed or rendered ineffective thereby, the remainder of this Contract, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.
33. Intent of Contract. This Contract is intended to describe the rights and responsibilities of and between Buyer and Seller and are not intended to, and shall not be deemed to, confer rights upon any person or entities other than the Parties hereto, or to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of Buyer or any other governmental entity not a Party hereto.
34. Non-Business Days. If any date for any action under this Contract is on a Saturday, Sunday or a day that is a "holiday" as such term is defined in C.R.C.P. 6, then the relevant date shall be extended automatically until the next business day.
35. Recitals and Exhibits. The recitals and exhibits attached hereto are hereby incorporated into this Contract.

36. City Council Condition Precedent. Seller acknowledges and agrees that Buyer's obligations under this Contract are expressly contingent and conditioned on the ratification of this Contract by the City Council of the City ("**City Council**") by way of an ordinance or such other means as the City determines is necessary in accordance with the Aurora City Code, Charter, or applicable policies and execution of this Contract by the Mayor of the City or the Mayor's designee (such conditions the "**City Council Approval**").
37. Authority of the City Attorney. By its ratification of this Contract as provided for in Section 36 above, City Council authorizes the City Attorney of the City of Aurora, without further action by City Council, to (i) make any such amendments or other modifications of this Contract as City Attorney may deem necessary for the purpose of extending deadlines provided for in this Contract or effecting non-substantive administrative modifications to this Contract; and (ii) exercise any elections of Buyer as provided for under this Contract; provided, however, that City Attorney may not make any such amendment or modification which is reasonably expected to increase the amount of the Purchase Price payable by Buyer hereunder.
38. Effective Date. The "**Effective Date**" shall be date on which this Contract is executed by Seller.
39. Tax-Deferred Exchange. Seller may consummate the sale of the Subject Stock in a single Closing as part of a so-called like kind exchange ("**Exchange**") pursuant to §1031 of the Internal Revenue Code of 1986, as amended, provided that: (a) the Closing shall not be delayed or affected by reasons of the Exchange, nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller's obligations under this Contract; (b) such Exchange shall not affect Seller's representations, warranties, liabilities and obligations under this Contract; (c) Seller shall effect the Exchange through an assignment of this Contract, or its rights under this Contract, to a qualified intermediary, provided that such assignment shall not release Seller of its obligations hereunder; and (d) Buyer shall not be required to take an assignment of the purchase agreement for other property or be required to acquire or hold title to any real property for purposes of consummating the Exchange. Buyer shall reasonably cooperate in connection with the Exchange, but shall not be required to incur any additional expense or obligation (contingent or otherwise) in connection therewith. Seller shall indemnify, defend and hold harmless Buyer from and against any and all costs (including, without limitation, attorneys' fees), expenses, liabilities, losses and damages incurred by reason of the execution and/or delivery of any Exchange documents, or by reason of participating in the Exchange. The foregoing indemnity shall survive the Closing.

IN WITNESS WHEREOF, the Parties have set their hands and seals this day and year indicated below.

[Signature Pages Follow]

Buyer:

City of Aurora, Colorado,
Acting by and through its
Utility Enterprise

Mike Coffman, Mayor

Date

Attest:

Stephen J. Ruger, City Clerk

Date

Approved as to form for Aurora:

Stephanie J. Neitzel, Assistant City Attorney II

Date

ACS#

State of Colorado)
) ss
County of Arapahoe)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by Mike Coffman, 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)

Seller:


BCI Waterco, LLC,
a Colorado limited liability company

By: 
Ronald J. Corsentino, Manager

Date: 7.7.2020

State of Colorado)
County of Denver) ss

The foregoing Contract was acknowledged before me this 7 day of JULY 2020, by Ronald J. Corsentino as Manager of BCI Waterco, LLC, a Colorado limited liability company.

Witness my hand and official seal. 
Notary Public

My commission expires: 02/22/2023

(Seal)

<p>JESSICA RUSSELL NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20194007817 MY COMMISSION EXPIRES 02/22/2023</p>
--

GWIP Consent and Acknowledgement:

GWIP, LLC, a Colorado limited liability company ("GWIP") executes this signature page solely for the limited purpose of granting the License as provided for in Section 3(f) of the Contract to which this signature is attached. In connection therewith, GWIP acknowledges that it has received good and valuable consideration for granting said License.

GWIP, LLC,
a Colorado limited liability company

By: [Signature]
John Spigler its manager

Date: 7-2-2020

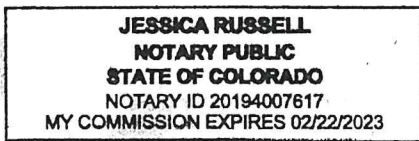
State of Colorado)
County of Denver) ss

The foregoing Contract was acknowledged before me this 2 day of July 2020, by John Spigler as manager of GWIP, LLC, a Colorado limited liability company.

Witness my hand and official seal. [Signature]
Notary Public

My commission expires: 02/22/2023

(Seal)

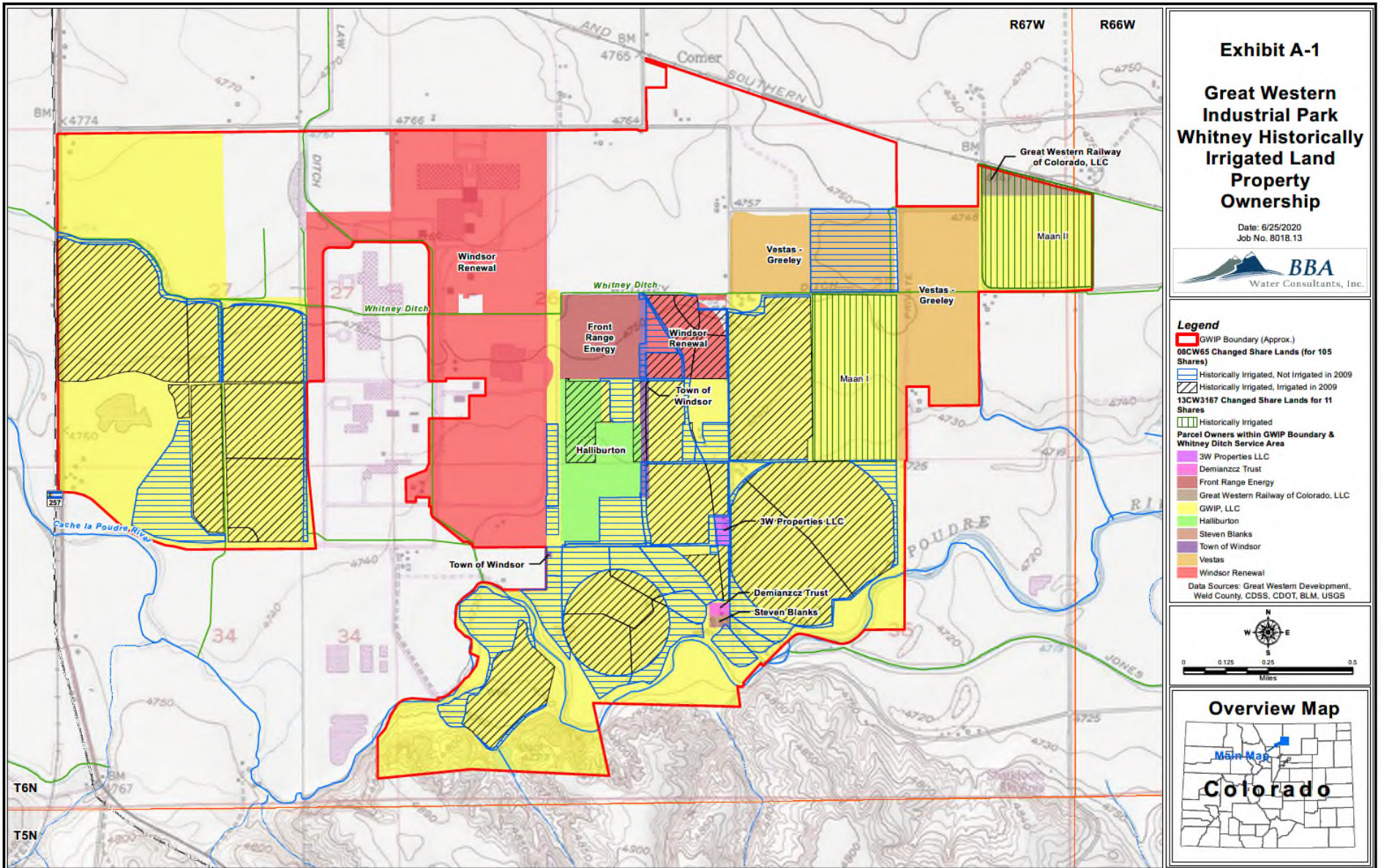


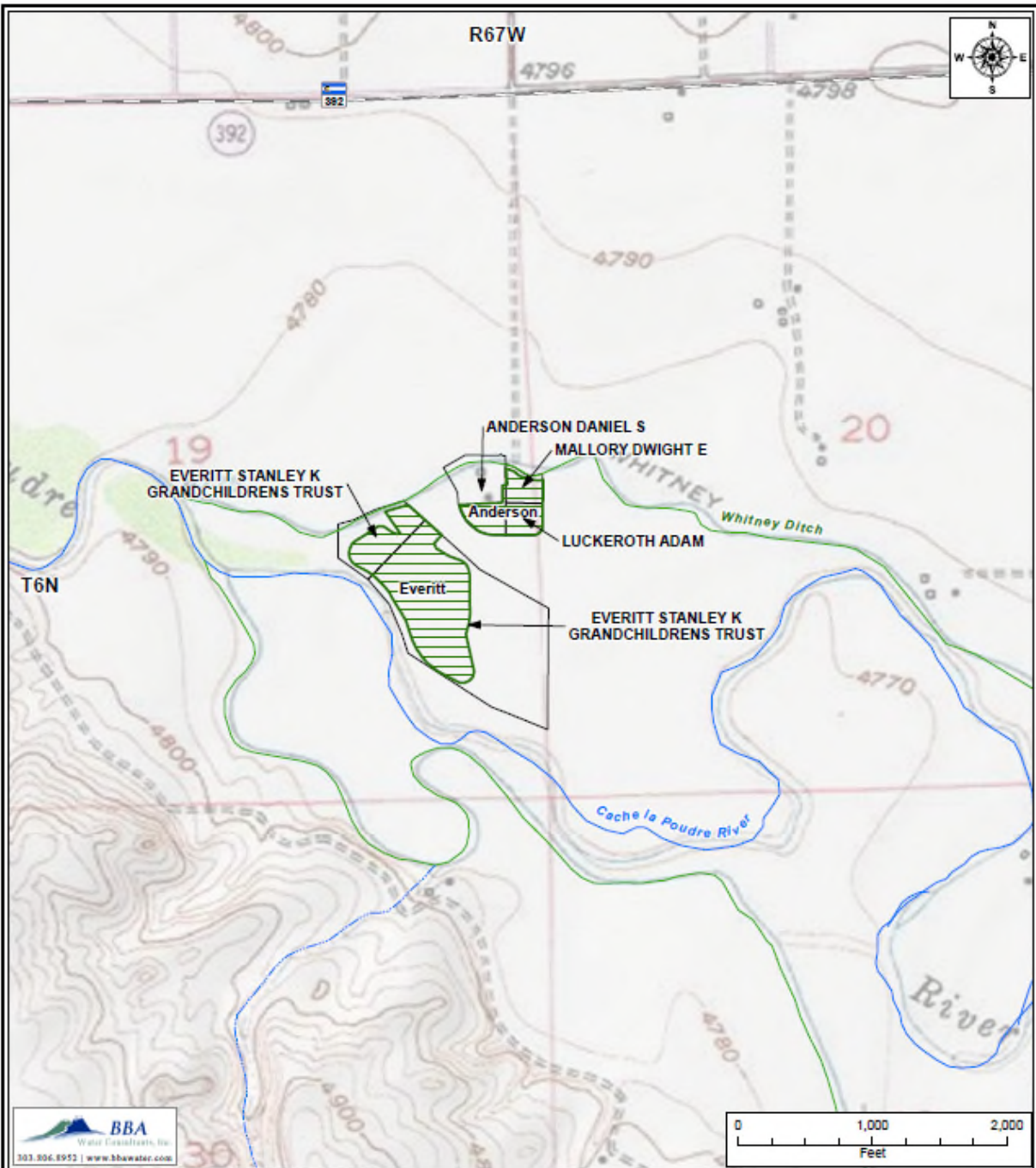
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Signature -3

Exhibit – A-1
Contract for Purchase of Irrigation Company Stock
Map of Historical Irrigated Lands

[See Attached]







**Exhibit A-1
(page 2)
Whitney Ditch
Historically Irrigated Land
Property Ownership**

Date: 4/14/2020 | Job No. 8018.13

Legend

-  Parcel Boundary (Owner)
-  13CW3167 Changed Shares Lands for 3 Shares

Data Source: Weld County, CDSS, CDOT, BLM, USGS



Exhibit – A-2
to
Contract for Purchase of Irrigation Company Stock

List of Dry-Up Covenants

1. Declaration of Dry-Up Covenant and Dedication of Easement (BLA 11) recorded October 21, 2011, at Reception No. 3800633 of the Weld County, Colorado, real property records (partial assignment; see Exhibit B-2).

This covenant subject to partial assignment relative to the land associated with the 119 Whitney shares of Seller, reserving the land associated with the seven (7) converted shares owned by others pursuant to Exhibit B-2, partial assignment document.

2. Dry Up Covenant (BLA 14) recorded December 9, 2011, at Reception No. 3811101 of the Weld County, Colorado, real property records.
3. Dry Up Covenant (BLA 14) recorded December 9, 2011, at Reception No. 3811102 of the Weld County, Colorado, real property records.
4. Dry Up Covenant (BLA 14) recorded January 11, 2012, at Reception No. 3817336 of the Weld County, Colorado, real property records.
5. Declaration of Dry-Up Covenant and Dedication of Easement (BLA II) recorded March 8, 2012, at Reception No. 3830693 of the Weld County, Colorado, real property records (partial assignment; see Exhibit B-4).

This covenant subject to partial assignment relative to the land associated with the 119 Whitney shares of Seller, reserving the land associated with the seven (7) shares converted shares owned by others pursuant to Exhibit B-4, the partial assignment document.

6. Declaration of Dry-Up Covenant and Dedication of Easement (BLA 15) recorded March 8, 2012, at Reception No. 3830694 of the Weld County, Colorado, real property records.
7. Declaration of Dry-Up Covenant and Declaration of Easement (BLA 14) recorded March 8, 2012, at Reception No. 3830695 of the Weld County, Colorado, real property records.
8. Declaration of Dry-Up Covenant and Dedication of Easement (BLA 11) recorded June 17, 2013, at Reception No. 3940785 of the Weld County, Colorado, real property records.

9. Declaration of Dry-Up Covenant and Dedication of Easement (M1 Landco) recorded October 4, 2013, at Reception No. 3968676 of the Weld County, Colorado, real property records.
10. Declaration of Dry-Up Covenant and Dedication of Easement (BLA II) recorded March 31, 2014, at Reception No. 4005739 of the Weld County, Colorado, real property records (partial assignment; see Exhibit B-3).

This covenant subject to partial assignment relative to the Whitney lands only pursuant to Exhibit B-3, partial assignment document.

11. Dry Up Covenant and Easement (M Waterco) recorded February 20, 2020, at Reception No. 4568010 of the Weld County, Colorado, real property records.
12. Dry-Up Covenant and Easement (GWIP, LLC) recorded March 20, 2020, at Reception No. 4576579 of the Weld County, Colorado, real property records.
13. Dry-Up Covenant and Easement (Great Western Railway of Colorado, LLC) recorded March 20, 2020, at Reception No. 4576578 of the Weld County, Colorado, real property records.

Exhibit – B-1
to
Contract for Purchase of Irrigation Company Stock

Form of Dry-Up Assignment
All Covenants Excluding Rec. Nos. 3800633, 3830693 and 4005739

When recorded return to:

Assignment of Dry-Up Covenants and Declarations

This Assignment of Dry-Up Covenants and Declarations (“Assignment”) is made as of the ____ day of _____, 20__ (“Effective Date”), from BCI Waterco, LLC, a Colorado limited liability company whose principal place of business is located at 252 Clayton Street, 4th Floor, Denver, CO 80206 (“Assignor”), to the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas acting by and through its Utility Enterprise, whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012-1555 (“Assignee”).

Recitals

A. Pursuant to that certain Contract for Purchase of Irrigation Company Stock between Assignor and Assignee (“Contract”), Assignor has conveyed one hundred eighteen (118) shares of stock in The Whitney Irrigation Company (“Ditch Company”), as represented by Share Certificate Number 455 and is the beneficial owner of one (1) share of stock in the Ditch Company as represented by Share Certificate Number 446 (“Water Rights”) to Assignee.

B. The Water Rights were previously changed as follows: (i) one hundred five (105) of the shares representing the Water Rights (including the one (1) share represented by Share Certificate Number 446) were changed in Water Division 1, Case No. 08CW65 and (ii) the remaining fourteen (14) of the shares representing the Water Rights were changed in Water Court, Water Division 1, Case No. 13CW3167. The decreed place of use for such changed shares is certain property including the land on which the Water Rights were previously used for agriculture.

C. The real property on which the Water Rights have been historically used (“Historical Irrigated Land”) includes the real property that is subject to those certain dry-up covenants identified as the as the "Dry-Up Covenants" on **Exhibit A** hereto. Hereinafter, the term “Dry-Up Covenants” includes the easement rights appurtenant thereto and described in the Dry-Up Covenants.

D. Pursuant to the Contract, Assignor is obligated to assign its interests in the Dry-Up Covenants to Assignee.

Agreement

NOW THEREFORE, Assignor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby covenant and agree as follows:

1. Assignment. Assignor hereby assigns transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Dry-Up Covenants. Assignee shall succeed to the rights and responsibilities of Assignor under the Dry-Up Covenants.

2. The foregoing transfer shall not limit the terms of the respective Dry-Up Covenants providing that the Dry-Up Covenants run with the Water Rights.

3. Assignor warrants that no other person or entity has any ownership or encumbrance interest in the Dry-Up Covenants.

4. This Assignment may be recorded by Assignee in the office of the Weld County, Colorado Clerk and Recorder.

[Remainder of page intentionally left blank]

Exhibit – A
to
Assignment of Dry-Up Covenants and Declarations

Dry-Up Covenants

1. Dry Up Covenant (BLA 14) recorded December 9, 2011, at Reception No. 3811101 of the Weld County, Colorado, real property records.
2. Dry Up Covenant (BLA 14) recorded December 9, 2011, at Reception No. 3811102 of the Weld County, Colorado, real property records.
3. Dry Up Covenant (BLA 14) recorded January 11, 2012, at Reception No. 3817336 of the Weld County, Colorado, real property records.
4. Declaration of Dry-Up Covenant and Dedication of Easement (BLA 15) recorded March 8, 2012, at Reception No. 3830694 of the Weld County, Colorado, real property records.
5. Declaration of Dry-Up Covenant and Declaration of Easement (BLA 14) recorded March 8, 2012, at Reception No. 3830695 of the Weld County, Colorado, real property records.
6. Declaration of Dry-Up Covenant and Dedication of Easement (BLA 11) recorded June 17, 2013, at Reception No. 3940785 of the Weld County, Colorado, real property records.
7. Declaration of Dry-Up Covenant and Dedication of Easement (M1 Landco) recorded October 4, 2013, at Reception No. 3968676 of the Weld County, Colorado, real property records.
8. Dry Up Covenant and Easement (M Waterco) recorded February 20, 2020, at Reception No. 4568010 of the Weld County, Colorado, real property records.
9. Dry-Up Covenant and Easement (GWIP, LLC) recorded March 20, 2020, at Reception No. 4576579 of the Weld County, Colorado, real property records.
10. Dry-Up Covenant and Easement (Great Western Railway of Colorado, LLC) recorded March 20, 2020, at Reception No. 4576578 of the Weld County, Colorado, real property records.

Exhibit – B-2
to
Contract for Purchase of Irrigation Company Stock

Form of Dry-Up Assignment
Rec. No. 3800633

When recorded return to:

**Assignment and Assumption of and Delineation of Rights under Declaration of Dry-Up
Covenant and Dedication of Easement
(Land Excluding 7 Converted Shares Owned by Others)**

This Assignment and Assumption of and Delineation of Rights under Declaration of Dry-Up Covenant and Dedication of Easement (Land Excluding 7 Converted Shares Owned by Others) (“**Assignment**”) is entered into by and among **BCI Waterco, LLC**, a Colorado limited liability company (“**Assignor**”) whose address is 252 Clayton Street, 4th Floor, Denver, CO 80206; 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 whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012-1555 (“**Assignee**”). The “**Effective Date**” of this Assignment shall be the date of mutual execution by Assignor and Assignee as shown on the signature page below.

Recitals

A. On _____, 2020, Assignor, as seller, and Assignee, as buyer, entered into that certain Contract for Purchase of Irrigation Company Stock (“**Contract**”), pursuant to which Assignor agreed to sell one hundred nineteen (119) shares of the Whitney Irrigation Company stock (“**Water Rights**”) to Assignee and to assign to Assignee certain dry-up covenants encumbering land historically irrigated by the Water Rights, including assignment of a portion of that certain Declaration of Dry-Up Covenant and Dedication of Easement recorded in the office of the Clerk and Recorder for Weld County, Colorado, on October 21, 2011, at Reception No. 3800633 (“**Covenant**”). A copy of the Covenant is attached hereto as **Exhibit A**.

B. Exhibit A attached to the Covenant contains a legal description of the lands historically irrigated by the Water Rights, which are to be dried up pursuant to the Covenant (“**Historical Land**”).

C. The Historical Land described in Exhibit A to the Covenant includes land associated with seven (7) shares of Whitney Irrigation Company stock currently owned by others (GWIP, LLC

as to one (1) share; and Great Western Metropolitan District No. 1 as to six (6) shares), and which seven (7) shares were changed in Division 1 Water Court Case No. 08CW65 and were converted to changed uses by GWIP, LLC pursuant to Paragraph 9(g)(ii) of the Decree in Case No. 08CW65 (“**GWIP Converted Shares**”).

D. The land irrigated by GWIP Converted Shares that is included within the legal description attached to the Covenant is owned by GWIP, LLC and shall be referred to herein as the “**GWIP Converted Land.**”

E. The entire property that is the subject of the Covenant and the Historical Land, including the GWIP Converted Land within such property, is depicted on the attached **Exhibit B**.

F. The portion of the Covenant to be assigned to Assignee in accordance with the Contract, and the portion that is in fact assigned in accordance with this Assignment, is the portion of the Covenant benefitting the subject Water Rights and the owners thereof; and providing for the dry-up of the Historical Land and its appurtenant easement rights as set forth in the Covenant, excluding only the GWIP Converted Land from this assignment.

G. Accordingly, Assignor, in accordance with this Assignment desires to assign to Assignee and Assignee desires to assume, all of Assignor’s rights and obligations under the Covenant; *except that*, no portion of the Covenant affecting the GWIP Converted Land depicted on **Exhibit B** is assigned or assumed hereunder.

Assignment and Agreement

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby assigns, transfers and sets over to Assignee, its successors and assigns, all of Assignor’s right, title and interest in and to the Covenant *except for* the portion of the Covenant affecting the GWIP Converted Land depicted on **Exhibit B**, and Assignee hereby accepts and consents to the Assignment and assumes all obligations of said Covenant *except for* the portion of the Covenant affecting the GWIP Converted Land depicted on **Exhibit B**. Accordingly, as of the Effective Date (i) all rights of Assignor as owner of the Water Rights to enforce dry up of the Historical Land depicted on the attached **Exhibit B** *except for* the portion thereof identified and depicted on **Exhibit B** as “7 Whitney Shares for GWIP” and (ii) all rights of Assignor as owner of the Water Rights to utilize the easement dedicated under Paragraph 4 of the Covenant as reasonably necessary to enforce and/or give full effect to said Covenant *except for* the portion of the Covenant affecting the GWIP Converted Land, are hereby assigned to and vested in Assignee, its successors and assigns.

2. Assignor expressly excepts and reserves from this Assignment all rights under and to the Covenant other than those rights expressly assigned pursuant to Paragraph 1 above, specifically including within this exception and reservation the portion of the Covenant affecting the GWIP Converted Land.

3. Assignee assumes all of those duties and obligations of the owner of the Water Rights under the Covenant which are incident to the rights under said Covenant that are assigned to Assignee pursuant to Paragraph 1 above. Assignee assumes no duties and obligations which are incident to those rights excepted and reserved from this Assignment by Assignor and retained for the benefit of the owners of the GWIP Converted Shares historically used on the GWIP Converted Land, their successors and assigns in and to the GWIP Converted Shares.

4. This Assignment may be executed by one or more parties hereto on any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Assignment by facsimile transmission or by scan and email shall be as effective as delivery of a manually executed counterpart hereof.

[Remainder of page intentionally blank; signature pages follow]

City of Aurora, Colorado,
Acting by and through its
Utility Enterprise

EXHIBIT – DO NOT EXECUTE

Mike Coffman, Mayor

Date

Attest:

EXHIBIT – DO NOT EXECUTE

Stephen J. Ruger, City Clerk

Date

APPROVED AS TO FORM FOR AURORA:

EXHIBIT – DO NOT EXECUTE

Stephanie J. Neitzel, Assistant City Attorney II

Date

ACS#

State of Colorado)

) ss

County of Arapahoe)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by Mike Coffman, 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

Declaration of Dry-Up Covenant and Dedication of Easement (“Covenant”)

**(For the Dry-Up of Property that Includes the Historical Land, Including the GWIP
Converted Land)**

AFTER RECORDING RETURN TO:

Johnson & Repucci LLP
c/o Stephen C. Larson
2521 Broadway, Suite A
Boulder, CO 80304

633


3800633 10/21/2011 04:23P Weld County, CO
1 of 4 R 26.00 D 0.00 Steve Moreno Clerk & Recorder

DECLARATION OF DRY-UP COVENANT AND DEDICATION OF EASEMENT

This DECLARATION OF DRY-UP COVENANT AND DEDICATION OF EASEMENT (this "Dry-Up Covenant and Easement") is made this ___ day of October, 2011, by Broe Land Acquisitions II, LLC, a Colorado limited liability company, whose legal address is 252 Clayton Street, 4th Floor, Denver, Colorado 80206 ("Declarant").

WHEREAS, Declarant is the owner of land located in Weld County, Colorado, which is legally described on Exhibit A attached hereto (the "Property"). The Property has historically been irrigated by water rights associated with shares of capital stock in the Whitney Irrigating Ditch Company (the "Company"), originally decreed on April 11, 1882 in Case No. 320 by the Larimer County District Court, and which shares were among the 112 shares quantified and changed by Great Western Development Company, as applicant, in Case No. 08CW65, in the District Court in and for Water Division 1 (the "Water Rights"); and

WHEREAS, as a term and condition of the decree entered in Case No. 08CW65, irrigation of the Property with the Water Rights must cease in order for the Water Rights to be utilized for their changed purposes decreed in Case No. 08CW65.

NOW, THEREFORE, Declarant declares that the Property is and shall be held, used, occupied, transferred, sold and conveyed subject to the covenants, conditions, restrictions, and easement set forth in this Dry-Up Covenant and Easement, all of which shall be covenants running with title to all portions of the Property, or equitable servitudes thereon, as the case may be, and shall be binding on all parties having any right, title or interest in the Property, and their respective successors, successors-in-title, assigns, heirs, devisees, executors, administrators, and personal representatives, and shall inure to the benefit of the Water Rights and to each owner of or persons entitled to use the Water Rights or any portion thereof:

1. Immediately upon the demand or demands of any party then owning the Water Rights or any portion thereof, and subject to the terms set forth below, the Property shall forever cease to be irrigated by the Water Rights, by any water out of the Whitney Irrigation Ditch, or tributary to the Cache la Poudre River, or by any other water rights as may be required by the District Court in and for Water Division 1 (the "Water Court"), the State or Division Engineers or any other court or agency having jurisdiction over the administration or adjudication of the Water Rights. At the election of any party then owning the Water Rights, this dry up may occur in phases and, in that event, (a) a demand to cease irrigating portions of the Property shall be made with respect to each phase of dry-up and (b) the amount of Property that shall cease being irrigated in accordance with each such demand shall be 6.1 acres of Property for every share associated with the Water Rights that is to be utilized for changed purposes as decreed in Case No. 08CW65. Any such dry-up demand may be in writing and may be recorded against the Property by the Water Rights owner making the demand, and any such recording shall be in the Weld County, Colorado real property records. Notwithstanding the right of the Water Rights owner to record its dry-up demand(s), which shall result in the permanent dry up of the Property

or portions thereof in accordance with this covenant, the effectiveness of this dry-up covenant is not dependent upon any such subsequent recording. From and after making each such dry-up demand, any action may be taken on the Property by the owner of the Water Rights or any portion thereof, that is necessary in order to eliminate all consumptive use of water for irrigation or sub-irrigation purposes, or as is necessary for the Water Rights to yield the maximum amount of historical consumptive use decreed to the Water Rights in Case No. 08CW65, which is 13.69 acre-feet of consumptive use per each Company share associated with the Water Rights.

2. This Dry-Up Covenant and Easement shall not prohibit irrigation of the Property with water rights that may in the future be transferred to the Property for such use through an appropriate Water Court proceeding, including water tributary to the Cache la Poudre River; nor from irrigating the Property with water from a well or wells to be constructed in the future which are nontributary wells or, if tributary (or not nontributary), are authorized to pump pursuant to a Water Court approved plan for augmentation; nor from irrigating the Property with any other water which is not tributary to the Cache la Poudre River, to include treated water supplied by a municipality or a water district.

3. Declarant shall provide any additional information relative to the Property or usage of water thereon as may be reasonably requested by the owner of the Water Rights to give full effect to this Dry-Up Covenant and Easement.

4. Declarant hereby dedicates for the benefit of the Water Rights and owner(s) thereof a non-exclusive, perpetual easement over, under and through the Property for access to the Property as may be reasonably necessary for the purposes of conducting any monumenting, revegetation, monitoring or testing of the Property or ground water, as may be required by the Water Court or by the State or Division Engineers, to enforce and/or give full effect to this Dry-Up Covenant and Easement. Such access and activities, however, may be exercised and conducted with due care; only after providing reasonable advance notice thereof to Declarant and its successors and assigns in and to the Property; and any damage shall be promptly restored.

5. This Dry-Up Covenant and Easement may be enforced by Declarant or by any party having any right, title or interest in and to the Water Rights, or any part thereof, their successors and assigns, or by the State or Division Engineers, at any time in any appropriate administrative action or any action at law or in equity. This Dry-Up Covenant and Easement shall forever bind Declarant, its successors and assigns in and to the Property or any portion thereof; shall run with and burden the Property; and shall run with and benefit the Water Rights and each owner of or persons entitled to use the Water Rights, or any portion thereof.

6. The prevailing party in any action to enforce the terms of this Dry-Up Covenant and Easement shall be entitled to recover its reasonable attorney fees.

7. This Dry-Up Covenant and Easement shall be recorded in the Weld County, Colorado real property records.

IN WITNESS WHEREOF, Declarant has executed this Dry-Up Covenant and Easement effective as of the date set forth above.

DECLARANT:

BROE LAND ACQUISITIONS II LLC, a
Colorado limited liability company

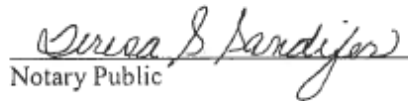

By John H. Lyda, Manager

STATE OF COLORADO)
City of) ss.
COUNTY OF DENVER)

The foregoing document was acknowledged before me this 20th day of October, 2011, by John H. Lyda, as Manager of Broe Land Acquisitions II LLC, a Colorado limited liability company, on behalf of the company.

Witness my hand and official seal.




Notary Public

My commission expires: Oct. 2, 2015
My Commission Expires 10022015

3800633 10/21/2011 04:23P Weld County, CO
4 of 4 R 26.00 D 0.00 Steve Moreno Clerk & Recorder

EXHIBIT A
to
DECLARATION OF DRY-UP COVENANT AND DEDICATION OF EASEMENT

Legal Description of the Historically Irrigated Land

A TRACT OF LAND SITUATE IN SECTION 26 AND SECTION 35, TOWNSHIP 6 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS A AND B, RECORDED EXEMPTION NO. 0807-26-4-RE 4064, ACCORDING TO PLAT RECORDED JUNE 3, 2005 AT RECEPTION NO. 3921882, BEING LOCATED IN THE S1/2 OF SECTION 26, AND THE N1/2 OF SECTION 35, TOWNSHIP 6 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO.

PARCEL 2:

LOT A, RECORDED EXEMPTION NO. 0807-35-1-RE 1244, AS SHOWN ON THE PLAT THEREOF, RECORDED MARCH 19, 1990 AT RECEPTION NO. 2208246, BEING LOCATED IN THE N1/2 OF THE NE1/4 OF SECTION 35, TOWNSHIP 6 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO.

PARCEL 3:

LOT B, RECORDED EXEMPTION NO. 0805-35-1-RE 475, AS SHOWN ON THE PLAT THEREOF, RECORDED JANUARY 21, 1981, AT RECEPTION NO. 1847470, BEING LOCATED IN THE S1/2 OF THE NE1/4 AND THE N1/2 OF THE SE1/4 OF SECTION 35, TOWNSHIP 6 NORTH, RANGE 67 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO.

Exhibit B

**Depiction of the Historical Land that is the Subject of the Covenant;
and Delineation of the GWIP Converted Land within Such Depiction**
[see next page]

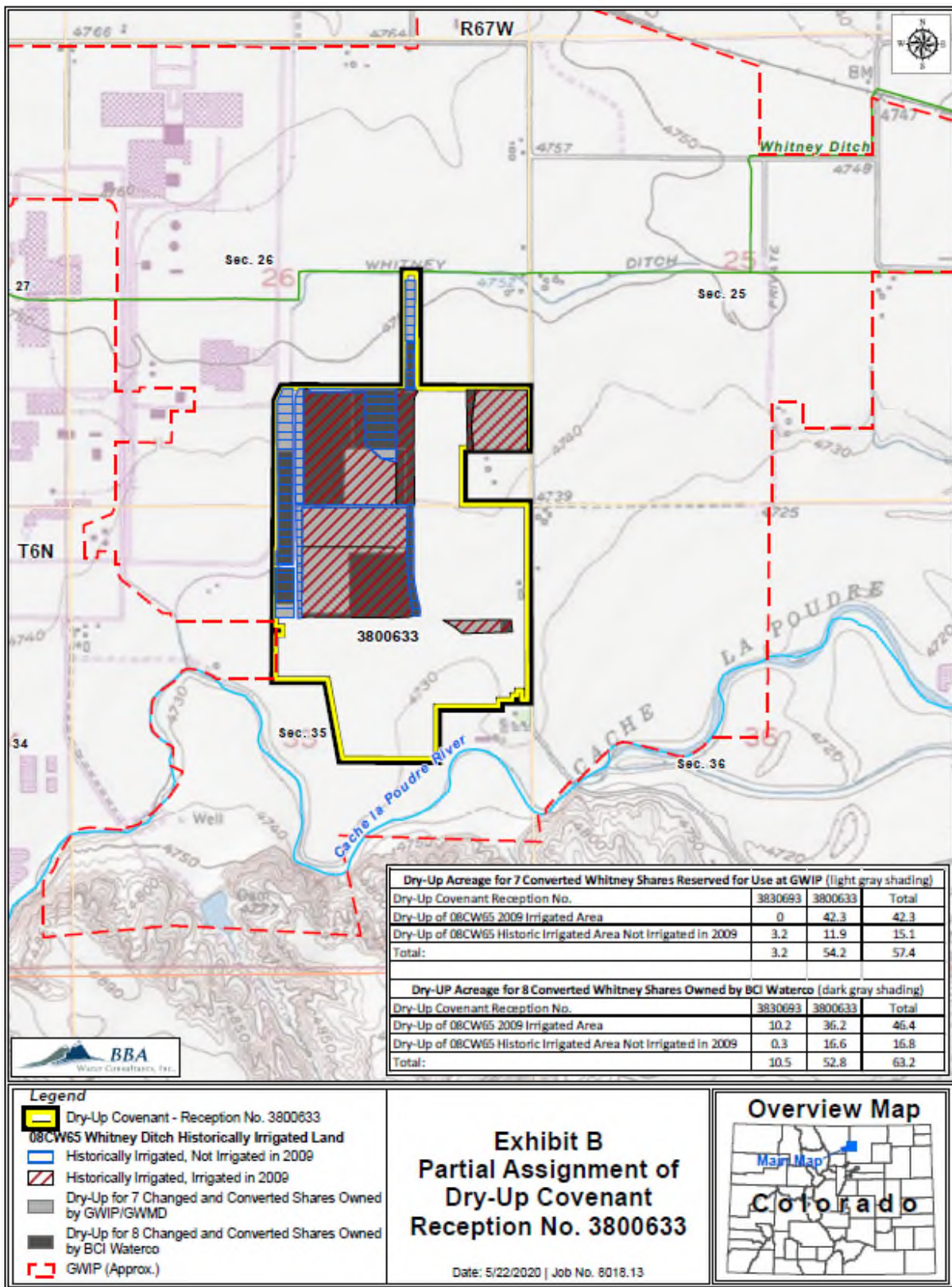


Exhibit – B-3
to
Contract for Purchase of Irrigation Company Stock

Form of Dry-Up Assignment
Rec. No. 4005739

When recorded return to:

**Assignment and Assumption of and Delineation of Rights Under Declaration of Dry-Up
Covenant and Dedication of Easement (Whitney Land)**

This Assignment and Assumption of and Delineation of Rights under Declaration of Dry-Up Covenant and Dedication of Easement (Whitney Land) (“**Assignment**”) is entered into by and among **BCI Waterco, LLC**, a Colorado limited liability company (“**Assignor**”) whose address is 252 Clayton Street, 4th Floor, Denver, CO 80206; 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, whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012-1555 (“**Assignee**”). The “**Effective Date**” of this Assignment shall be the date of mutual execution by Assignor and Assignee as shown on the signature page below.

Recitals

A. On _____, 2020, Assignor, as seller, and Assignee, as buyer, entered into that certain Contract for Purchase of Irrigation Company Stock (“**Contract**”), pursuant to which Assignor agreed to sell one hundred nineteen (119) shares of the Whitney Irrigation Company stock (“**Water Rights**”) to Assignee and to assign to Assignee certain dry-up covenants encumbering land historically irrigated by the Water Rights, including assignment of a portion of that certain Declaration of Dry-Up Covenant and Dedication of Easement (BLA II) recorded in the office of the Clerk and Recorder for Weld County, Colorado (“**Official Records**”), on March 31, 2014, at Reception No. 4005739 (“**Covenant**”). A copy of the Covenant is attached hereto as **Exhibit A**.

B. Exhibit A attached to the Covenant contains a legal description of the lands to be dried up pursuant to the Covenant, including a portion of the land historically irrigated by the Water Rights (“**Historical Land**”), among others.

C. The Covenant, in accordance with the legal description attached thereto, provides for the dry up of lands other than the Historical Land, pursuant to other water rights owned by Assignor, its predecessor and its assigns. Specifically, the Covenant includes, in addition to the Historical Land, other land which was historically irrigated with water rights of (i) the B.H Eaton Irrigation

Company (“**BH Eaton**”), (ii) the New Cache la Poudre Irrigation Company, and (iii) the New Cache la Poudre Reservoir Company. The companies described in C.(ii) and C.(iii), shall be referred to collectively as “**New Cache.**”

D. The land irrigated by BH Eaton water rights that are included within the legal description attached to the Covenant shall be referred to herein as the “**B.H. Eaton Land**” and the land irrigated by the New Cache water rights that are included within the legal description attached to the Covenant shall be referred to herein as the “**New Cache Land.**”

E. The entire property that is the subject of the Covenant and the Historical Land, the B.H. Eaton Land and the New Cache Land within such property are all depicted on the attached **Exhibit B.**

F. In connection with the transfer of the New Cache water rights historically irrigating the New Cache Land described in the Covenant, the portion of the Covenant providing for the dry up of the New Cache Land and its appurtenant easement rights as set forth in the Covenant (the “**New Cache Dry-Up**”) was assigned by BLA II (by merger now known as GWIP, LLC), to the Town of Windsor (“**Windsor**”) pursuant to that certain Assignment and Assumption of and Delineation of Rights under Certain Declarations of Dry-Up Covenant and Dedication of Easements (“**New Cache Dry-Up Assignment**”) recorded in the Official Records on June 9, 2017, at Reception No. 4309159.

G. The portion of the Covenant to be assigned to Assignee in accordance with the Contract, and the portion that is in fact assigned in accordance with this Assignment, is the portion of the Covenant benefitting the subject Water Rights and the owners thereof; and providing for the dry-up of the Historical Land and its appurtenant easement rights as set forth in the Covenant (“**Whitney Dry-Up**”). No portion of the Covenant that provides for the dry-up of the New Cache Land or the B.H. Eaton Land is assigned to Assignee hereunder.

H. Accordingly, Assignor, in accordance with this Assignment desires to assign to Assignee and Assignee desires to assume, all of Assignor’s rights and obligations under the Whitney Dry-Up portion of the Covenant, which affects only the Historical Land; and no other portion of the Covenant, *i.e.*, no portion of the Covenant affecting the New Cache Land or the B.H. Eaton Land is assigned hereunder.

Assignment and Agreement

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby assigns, transfers and sets over to Assignee, its successors and assigns, all of Assignor’s right, title and interest in and to the Whitney Dry-Up portion of the Covenant as described above, and Assignee hereby accepts and consents to the Assignment and assumes all obligations of said Whitney Dry-Up portion of the Covenant. Accordingly, as of the Effective Date (i) all rights of Assignor as owner of the Water Rights to enforce dry up of the Historical Land depicted on the attached **Exhibit B** as “Irrigated via Whitney Ditch” and (ii) all

rights of Assignor as owner of the Water Rights to utilize the easement dedicated under Paragraph 4 of the Covenant as reasonably necessary to enforce and/or give full effect to the Whitney Dry-Up portion of the Covenant, are hereby assigned to and vested in Assignee, its successors and assigns.

2. Assignor expressly excepts and reserves from this Assignment all rights under and to the Covenant other than those rights expressly assigned pursuant to Paragraph 1 above, specifically including within this exception and reservation:

(i) The portion of the Covenant establishing the right to enforce dry up of the New Cache Land (depicted on the attached **Exhibit B** as “Irrigated via New Cache System”) which portion and which right were assigned to Windsor pursuant to the New Cache Dry-Up Assignment recorded in the Official Records on June 9, 2017, at Reception No. 4309159, for Windsor’s benefit and for the benefit of its successors and assigns in and to the New Cache water rights historically used on the New Cache Land; and

(ii) The portion of the Covenant establishing the right to enforce dry up of the B.H. Eaton Land (depicted on the attached **Exhibit B** as “Irrigated via B.H. Eaton”) which portion and which right are hereby expressly reserved unto Assignor, for its benefit and for the benefit of its successors and assigns in and to the B.H. Eaton water rights historically used on the B.H. Eaton Land.

3. Assignee assumes all of those duties and obligations of the owner of the Water Rights under the Covenant which are incident to the rights under said Covenant that are assigned to Assignee pursuant to Paragraph 1 above. Assignee assumes no duties and obligations which are incident to those rights excepted and reserved from this Assignment by Assignor and retained for the benefit of the owners of the New Cache water rights historically used on the New Cache Land and the owners of the B.H. Eaton water rights historically used on the B.H. Eaton Land, respectively, and their successors and assigns in and to such water rights.

4. This Assignment may be executed by one or more parties hereto on any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Assignment by facsimile transmission or by scan and email shall be as effective as delivery of a manually executed counterpart hereof.

[Remainder of page intentionally blank; signature pages follow]

BCI WATERCO, LLC, a Colorado limited liability company

By: **EXHIBIT – DO NOT EXECUTE**
[_____] , its [_____]

Date: _____

State of Colorado)
) :ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by [_____] as [_____] of BCI Waterco, LLC, a Colorado limited liability company.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)

City of Aurora, Colorado,
Acting by and through its
Utility Enterprise

EXHIBIT – DO NOT EXECUTE

Mike Coffman, Mayor

Date

Attest:

EXHIBIT – DO NOT EXECUTE

Stephen J. Ruger, City Clerk

Date

Approved as to form for Aurora:

EXHIBIT – DO NOT EXECUTE

Stephanie J. Neitzel, Assistant City Attorney II

Date

ACS#

State of Colorado)
) ss
County of Arapahoe)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by Mike Coffman, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. _____

Notary Public

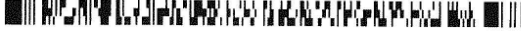
My commission expires: _____

(Seal)

Exhibit A

Declaration of Dry-Up Covenant and Dedication of Easement (“Covenant”)

(For the Dry-Up of Property that Includes the Historical Land)



**DECLARATION OF DRY-UP COVENANT
AND DEDICATION OF EASEMENT (BLA II)**

This DECLARATION OF DRY-UP COVENANT AND DEDICATION OF EASEMENT (this "Dry-Up Covenant and Easement") is made this ____ day of _____, 2014, by Broe Land Acquisitions II, LLC, a Colorado limited liability company, whose legal address is 252 Clayton Street, 4th Floor, Denver, Colorado 80206 ("Declarant").

WHEREAS, Declarant is the owner of land located in Weld County, Colorado, which is legally described on Exhibit A attached hereto (the "Property"). Portions of the Property have historically been irrigated by water rights, including without limitation, water rights associated with shares of capital stock in the New Cache la Poudre Irrigating Company and shares of stock in B. H. Eaton Ditch Company, originally decreed on April 11, 1882 in Case No. 320 by the Larimer County District Court (collectively, all water rights historically used on the Property, whether or not specifically referenced above, shall be referred to as the "Water Rights"); and

WHEREAS, Grantor intends to change the use of the Water Rights so they can be used for augmentation, industrial, commercial and similar purposes; and

WHEREAS, irrigation of the Property with the Water Rights must cease in order for the Water Rights to be utilized for their changed purposes.

NOW, THEREFORE, Declarant declares that the Property is and shall be held, used, occupied, transferred, sold and conveyed subject to the covenants, conditions, restrictions, and easement set forth in this Dry-Up Covenant and Easement, all of which shall be covenants running with title to the Property, or equitable servitudes thereon, as the case may be, and shall be binding on all parties having any right, title or interest in the Property, and their respective successors, successors-in-title, assigns, heirs, devisees, executors, administrators, and personal representatives, and shall inure to the benefit of the Water Rights and to each owner of or persons entitled to use the Water Rights or any portion thereof:

1. Immediately upon and in accordance with the demand or demands of any party then owning the Water Rights or any portion thereof, and subject to the terms set forth below, the Property or any specified portions thereof shall forever cease to be irrigated by the Water Rights or any specified portion thereof, and the specified portions of the Property historically irrigated with any portion of the Water Rights shall forever cease to be irrigated by any water tributary to the Cache la Poudre River, or by any other water rights, as may be required by the District Court in and for Water Division 1 (the "Water Court"), the State or Division Engineers or any other court or agency having jurisdiction over the administration or adjudication of the Water Rights. At the election of any party then owning the Water Rights, this dry up may occur in phases. Any such dry-up demand may be in writing and may be recorded against the Property by the Water Rights owner making the demand, and any such recording shall be in the Weld County, Colorado real property records. Notwithstanding the right of the Water Rights owner to record its dry-up demand(s), which shall result in the permanent dry up of the Property or portions thereof in

{00267403 / 1 }



accordance with this covenant, the effectiveness of this dry-up covenant is not dependent upon any such subsequent recording. From and after making each such dry-up demand, any action may be taken on the Property by the owner of the Water Rights or any portion thereof, that is necessary in order to eliminate all consumptive use of water for irrigation or sub-irrigation purposes, as is necessary for the Water Rights to yield the maximum amount of historical consumptive use in any change of the Water Rights.

2. This Dry-Up Covenant and Easement shall not prohibit irrigation of the portions of the Property described above, with water rights that may in the future be transferred to such portions of the Property for such use through an appropriate Water Court proceeding, including water tributary to the Cache la Poudre River; nor from irrigating such portions of the Property with water from a well or wells to be constructed in the future which are nontributary wells or, if tributary (or not nontributary), are authorized to pump pursuant to a Water Court approved plan for augmentation; nor from irrigating such portions of the Property with any other water which is not tributary to the Cache la Poudre River, to include treated water supplied by a municipality or a water district.

3. Declarant shall provide any additional information relative to the Property or usage of water thereon as may be reasonably requested by the owner of the Water Rights to give full effect to this Dry-Up Covenant and Easement.

4. Declarant hereby dedicates for the benefit of the Water Rights and owner(s) thereof a non-exclusive, perpetual easement over, under and through the Property for access to the Property as may be reasonably necessary for the purposes of conducting any monumenting, revegetation, monitoring or testing of the Property or ground water, as may be required by the Water Court or by the State or Division Engineers, to enforce and/or give full effect to this Dry-Up Covenant and Easement. Such access and activities, however, must be exercised and conducted with due care; may be exercised only after providing reasonable advance notice thereof to Declarant and its successors and assigns in and to the Property; and any damage shall be promptly restored.

5. This Dry-Up Covenant and Easement may be enforced by Declarant or by any party having any right, title or interest in and to the Water Rights, or any part thereof, their successors and assigns, or by the State or Division Engineers, at any time in any appropriate administrative action or any action at law or in equity. This Dry-Up Covenant and Easement shall forever bind Declarant, its successors and assigns in and to the Property; shall run with and burden the Property; and shall run with and benefit the Water Rights and each owner of or persons entitled to use the Water Rights, or any portion thereof.

6. The prevailing party in any action to enforce the terms of this Dry-Up Covenant and Easement shall be entitled to recover its reasonable attorney fees.

7. This Dry-Up Covenant and Easement shall be recorded in the Weld County, Colorado real property records.

IN WITNESS WHEREOF, Declarant has executed this Dry-Up Covenant and Easement effective as of the date set forth above.

DECLARANT:

BROE LAND ACQUISITIONS II, LLC, a
Colorado limited liability company

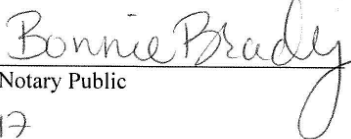


By: Thomas Mandula, Manager

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

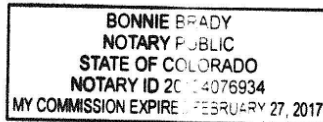
The foregoing document was acknowledged before me this 2A day of March, 2014, by Thomas Mandula, as Manager of Broe Land Acquisitions II, LLC, a Colorado limited liability company, on behalf of the company.

Witness my hand and official seal.



Notary Public

My commission expires: Feb 27 2017



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Steve Moreno, Clerk and Recorder, Weld County, CO

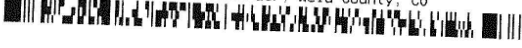


EXHIBIT A
to
DECLARATION OF DRY-UP COVENANT
AND DEDICATION OF EASEMENT (BLA II)
Legal Description of the Historically Irrigated Land

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EXHIBIT A
Legal Description
West Property

A TRACT OF LAND SITUATE IN SECTIONS 27 AND 34, TOWNSHIP 6 NORTH, RANGE 67 WEST, OF THE 6TH P.M.; COUNTY OF WELD, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL I:

THE NW 1/4; THE SW 1/4; THE W 1/2 OF THE NE 1/4; THE W 1/2 OF THE SE 1/4; AND THE NE 1/4 OF THE NE 1/4 OF SECTION 27, TOWNSHIP 6 NORTH, RANGE 67 WEST, OF THE 6TH P.M.; COUNTY OF WELD, STATE OF COLORADO;
EXCEPT PARCELS CONVEYED TO WELD COUNTY BY DEEDS RECORDED JUNE 24, 1936 IN BOOK 995 AT PAGES 165, 166 AND 167;
AND EXCEPT PARCEL CONVEYED TO THE DEPARTMENT OF HIGHWAYS BY DEED RECORDED JANUARY 6, 1964 IN BOOK 502 AT RECEPTION NO. 1425440; AND EXCEPT PARCEL CONVEYED TO THE TOWN OF WINDSOR BY DEEDS RECORDED JUNE 2, 1995 AT RECEPTION NO. 2440899 AND 2440900.

PARCEL II:

THE N 1/2 OF THE NW 1/4; THE SW 1/4 OF THE NW 1/4; THE NW 1/4 OF THE NE 1/4; AND THE SW 1/4 OF SECTION 34, TOWNSHIP 6 NORTH, RANGE 67 WEST, OF THE 6TH P.M.; COUNTY OF WELD, STATE OF COLORADO;
EXCEPT PARCELS CONVEYED TO WELD COUNTY BY DEEDS RECORDED JUNE 24, 1936 IN BOOK 995 AT PAGES 162, 163, 165 AND 167;
AND EXCEPT PARCEL CONVEYED TO THE DEPARTMENT OF HIGHWAYS, STATE OF COLORADO BY DEED RECORDED JANUARY 14, 1963 IN BOOK 1635 AT PAGE 375;
AND EXCEPT PARCEL CONVEYED BY DEED RECORDED NOVEMBER 20, 1968 IN BOOK 602 AT RECEPTION NO. 1524120;
AND EXCEPT PARCEL CONVEYED BY DEED RECORDED MAY 14, 1970 IN BOOK 625 AT RECEPTION NO. 1547170;
AND EXCEPT THAT PARCEL CONVEYED BY DEED RECORDED AUGUST 18, 1993 IN BOOK 1398 AT RECEPTION NO. 2346661;
AND EXCEPT THAT PORTION OF THE SW 1/4 LYING EAST OF THE EAST BANK OF THE POUDE RIVER BRANCH THAT RUNS GENERALLY IN AN SOUTHEASTERLY-NORTHWESTERLY DIRECTION.

THE ABOVE-DESCRIBED PARCELS ALSO BEING DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 27, AND CONSIDERING THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION TO BEAR N89°24'06"E, WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO, BOTH ENDS OF SAID LINE BEING MARKED BY A 3-1/4" ALUMINUM CAP STAMPED PLS 20685; (SAID BEARING IS A GRID BEARING OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983(1992), DETERMINED BY GEODETIC (GPS) OBSERVATIONS);

THENCE N38°30'46"E, 82.39 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EASTMAN PARK DRIVE AS DESCRIBED IN THE DEEDS TO THE TOWN OF WINDSOR

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RECORDED AT RECEPTION NOS. 2440899 AND 2440900, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, N89°24'06"E, 2,557.30 FEET;
THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, N89°24'43"E, 2,606.54 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 27;
THENCE S00°31'48"E, 1,256.24 FEET TO THE NORTH SIXTEENTH CORNER COMMON TO SECTIONS 26 AND 27;
THENCE S89°27'56"W, 1,305.13 FEET TO THE NORTHEAST SIXTEENTH CORNER OF SAID SECTION 27;
THENCE S00°27'03"E, 1,320.03 FEET TO THE EAST SIXTEENTH CORNER OF SAID SECTION 27;
THENCE S00°27'03"E, 2,640.33 FEET TO THE EAST SIXTEENTH CORNER COMMON TO SECTIONS 27 AND 34;
THENCE S05°33'47"E, 1,328.57 FEET TO THE NORTHEAST SIXTEENTH CORNER OF SAID SECTION 34;
THENCE S89°42'22"W, 1,191.15 FEET TO THE NORTH SIXTEENTH CORNER OF SAID SECTION 34;
THENCE S89°43'52"W, 1,431.99 FEET TO THE NORTHWEST SIXTEENTH CORNER OF SAID SECTION 34;
THENCE S05°29'44"E, 1,323.82 FEET TO THE WEST SIXTEENTH CORNER OF SAID SECTION 34;
THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 34, N89°49'11"E, 112.45 FEET TO A POINT ON THE NORTH TOP BANK OF THE CACHE LA POUDDRE RIVER;
THENCE ALONG SAID NORTH TOP BANK THE FOLLOWING NINE (9) COURSES:
1. S47°39'54"E, 96.16 FEET;
2. S63°19'51"E, 145.64 FEET;
3. S63°20'24"E, 165.53 FEET;
4. S61°36'06"E, 178.58 FEET;
5. S55°49'36"E, 343.62 FEET;
6. S39°11'21"E, 666.47 FEET;
7. S47°14'02"E, 241.40 FEET;
8. S42°09'12"E, 112.35 FEET;
9. S24°37'22"E, 22.47 FEET TO A POINT ON THE NORTHERLY LINE OF THAT PARCEL DESCRIBED IN THE DEED RECORDED AT RECEPTION NO. 1547170 IN THE OFFICE OF THE WELD COUNTY CLERK AND RECORDER;
THENCE ALONG THE NORTHERLY AND WESTERLY LINES OF SAID PARCEL THE FOLLOWING TWO (2) COURSES:
1. S89°59'27"W, 15.96 FEET;
2. S00°00'33"E, 46.00 FEET TO A POINT ON THE NORTHERLY LINE OF THAT PARCEL DESCRIBED IN THE DEED RECORDED AT RECEPTION NO. 2346661 IN THE OFFICE OF THE WELD COUNTY CLERK AND RECORDER;
THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL THE FOLLOWING SEVEN (7) COURSES:
1. S18°51'49"W, 157.80 FEET;
2. S65°58'22"W, 77.05 FEET;
3. N89°44'14"W, 1,157.23 FEET;
4. N89°48'21"W, 890.75 FEET;
5. N74°12'22"W, 112.97 FEET;
6. S75°08'30"W, 90.32 FEET;



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7. S88°11'36"W, 326.44 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 257;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, THE FOLLOWING EIGHT (8) COURSES:

1. N13°20'56"W, 145.27 FEET;

2. S87°07'44"W, 32.66 FEET;

3. N13°35'36"W, 1,187.51 FEET;

4. 395.88 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1,697.50 FEET, A CENTRAL ANGLE OF 13°21'44", AND A CHORD WHICH BEARS N06°54'44"W, 394.99 FEET;

5. N00°13'53"W, 2,428.29 FEET;

6. N00°13'54"W, 2,633.31 FEET;

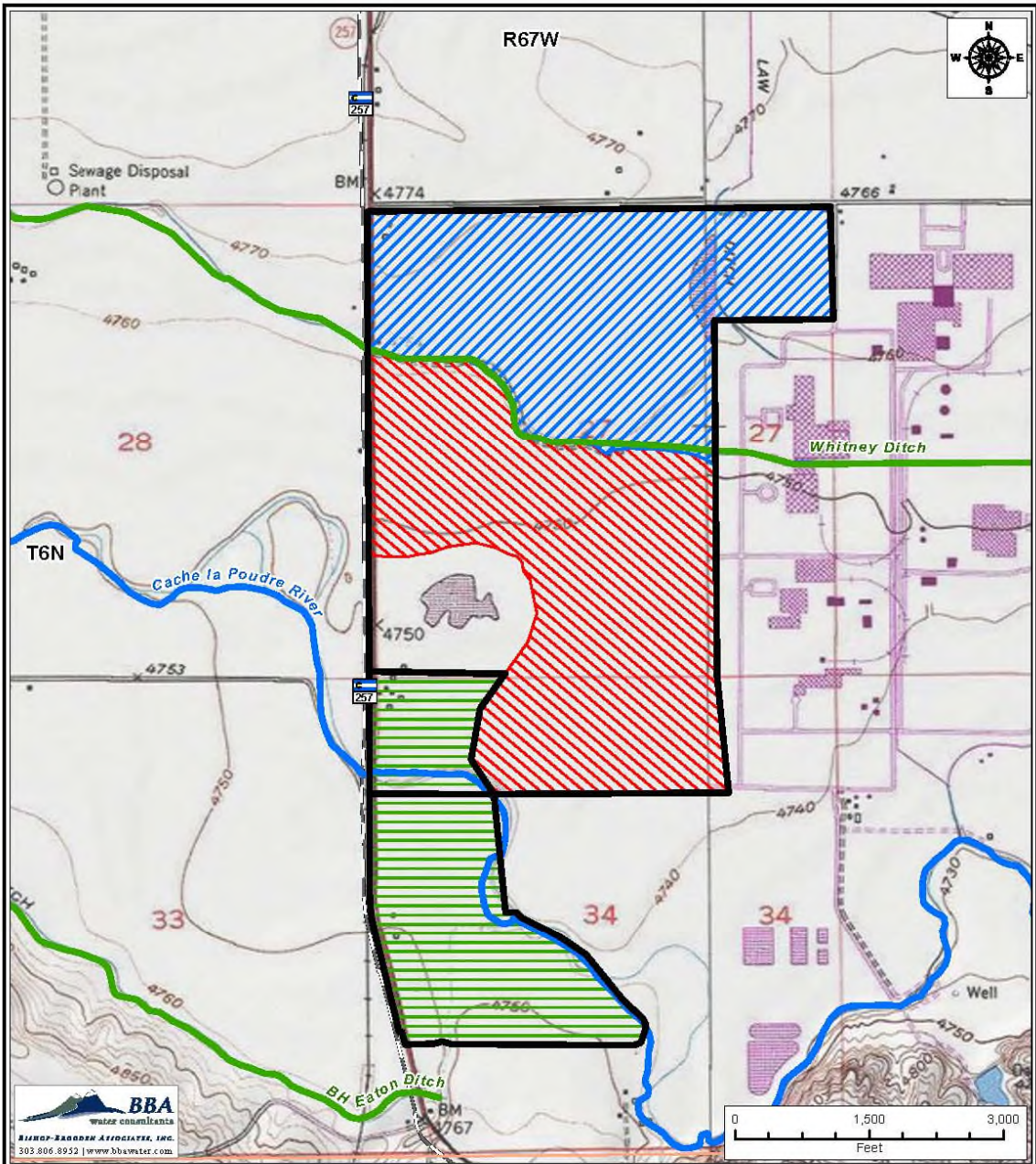
7. N00°13'30"W, 2,559.07 FEET;

8. N51°58'19"E, 13.99 FEET TO THE POINT OF BEGINNING.

Exhibit B

**Depiction of the Property that is the Subject of the Covenant;
and Delineation of the Historical Land, the New Cache Land and the B.H. Eaton Land
within such Depiction**

[see next page]



**GWIP West Side
Historically Irrigated
Land and Dry-Up
Assignment**

Date: 12/10/2019 | Job No. 8018.16

Legend

-  Irrigated via New Cache System
-  Irrigated via Whitney Ditch
-  Irrigated via BH Eaton
-  Subject Dry-Up Covenant (Approx.)

Data Source: Google Earth, CDOT, USGS, BLM



Exhibit – B-4
to
Contract for Purchase of Irrigation Company Stock

Form of Dry-Up Assignment
Rec. No. 3830693

When recorded return to:

**Assignment and Assumption of and Delineation of Rights Under
Declaration of Dry-Up Covenant and Dedication of Easement
(Land Excluding 7 Converted Shares Owned by Others)**

This Assignment and Assumption of and Delineation of Rights under Declaration of Dry-Up Covenant and Dedication of Easement (Land Excluding 7 Converted Shares Owned by Others) (“**Assignment**”) is entered into by and among **BCI Waterco, LLC**, a Colorado limited liability company (“**Assignor**”) whose address is 252 Clayton Street, 4th Floor, Denver, CO 80206; 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 whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555 (“**Assignee**”). The “**Effective Date**” of this Assignment shall be the date of mutual execution by Assignor and Assignee as shown on the signature page below.

RECITALS

A. On _____, 2020, Assignor, as seller, and Assignee, as buyer, entered into that certain Contract for Purchase of Irrigation Company Stock (“**Contract**”), pursuant to which Assignor agreed to sell one hundred nineteen (119) shares of the Whitney Irrigation Company stock (“**Water Rights**”) to Assignee and to assign to Assignee certain dry-up covenants encumbering land historically irrigated by the Water Rights, including assignment of a portion of that certain Declaration of Dry-Up Covenant and Dedication of Easement (BLA II) recorded in the office of the Clerk and Recorder for Weld County, Colorado (“**Official Records**”), on March 8, 2012, at Reception No. 3830693 (“**Covenant**”). A copy of the Covenant is attached hereto as **Exhibit A**.

B. Exhibit A attached to the Covenant contains a legal description of the lands historically irrigated by the Water Rights, which are to be dried up pursuant to the Covenant (“**Historical Land**”).

C. The Historical Land described in Exhibit A to the Covenant includes land historically irrigated with seven (7) shares of Whitney Irrigation Company stock currently owned by others (GWIP, LLC as to one (1) share; and Great Western Metropolitan District No. 1 as to six (6) shares), and which seven (7) shares were changed in Division 1 Water Court Case No. 08CW65 and were converted to changed uses by GWIP, LLC pursuant to Paragraph 9(g)(ii) of the Decree in Case No. 08CW65 (“**GWIP Converted Shares**”).

D. The land irrigated by GWIP Converted Shares that is included within the legal description attached to the Covenant is owned by GWIP, LLC and shall be referred to herein as the “**GWIP Converted Land.**”

E. The entire property that is the subject of the Covenant and the Historical Land, including the GWIP Converted Land within such property, is depicted on the attached **Exhibit B.**

F. The portion of the Covenant to be assigned to Assignee in accordance with the Contract, and the portion that is in fact assigned in accordance with this Assignment, is the portion of the Covenant benefitting the subject Water Rights and the owners thereof; and providing for the dry-up of the Historical Land and its appurtenant easement rights as set forth in the Covenant, excluding only the GWIP Converted Land from this assignment.

G. Accordingly, Assignor, in accordance with this Assignment desires to assign to Assignee and Assignee desires to assume, all of Assignor’s rights and obligations under the Covenant; *except that*, no portion of the Covenant affecting the GWIP Converted Land depicted on **Exhibit B** is assigned or assumed hereunder.

Assignment and Agreement

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby assigns, transfers and sets over to Assignee, its successors and assigns, all of Assignor’s right, title and interest in and to the Covenant *except for* the portion of the Covenant affecting the GWIP Converted Land depicted on **Exhibit B**, and Assignee hereby accepts and consents to the Assignment and assumes all obligations of said Covenant *except for* the portion of the Covenant affecting the GWIP Converted Land depicted on **Exhibit B**. Accordingly, as of the Effective Date (i) all rights of Assignor as owner of the Water Rights to enforce dry up of the Historical Land depicted on the attached **Exhibit B** *except for* the portion thereof identified and depicted as “7 Whitney Shares for GWIP” and (ii) all rights of Assignor as owner of the Water Rights to utilize the easement dedicated under Paragraph 4 of the Covenant as reasonably necessary to enforce and/or give full effect to said Covenant *except for* the portion of the Covenant affecting the GWIP Converted Land, are hereby assigned to and vested in Assignee, its successors and assigns.

2. Assignor expressly excepts and reserves from this Assignment all rights under and to the Covenant other than those rights expressly assigned pursuant to Paragraph 1 above,

specifically including within this exception and reservation the portion of the Covenant affecting the GWIP Converted Land.

3. Assignee assumes all of those duties and obligations of the owner of the Water Rights under the Covenant which are incident to the rights under said Covenant that are assigned to Assignee pursuant to Paragraph 1 above. Assignee assumes no duties and obligations which are incident to those rights excepted and reserved from this Assignment by Assignor and retained for the benefit of the owners of the GWIP Converted Shares historically used on the GWIP Converted Land, their successors and assigns in and to the GWIP Converted Shares.

4. This Assignment may be executed by one or more parties hereto on any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Assignment by facsimile transmission or by scan and email shall be as effective as delivery of a manually executed counterpart hereof.

[Remainder of page intentionally blank; signature pages follow]

BCI WATERCO, LLC, a Colorado limited liability company

By: **EXHIBIT – DO NOT EXECUTE**
[_____] , its [_____]

Date: _____

State of Colorado)
) :ss
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by [_____] as [_____] of BCI Waterco, LLC, a Colorado limited liability company.

Witness my hand and official seal. _____
Notary Public

My commission expires: _____

(Seal)

City of Aurora, Colorado
Acting by and through its
Utility Enterprise

EXHIBIT – DO NOT EXECUTE

Mike Coffman, Mayor

Date

Attest:

EXHIBIT – DO NOT EXECUTE

Stephen J. Ruger, City Clerk

Date

Approved as to form for Aurora:

EXHIBIT – DO NOT EXECUTE

Stephanie J. Neitzel, Assistant City Attorney II

Date

ACS#

State of Colorado)

) ss

County of Arapahoe)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by Mike Coffman, 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

Declaration of Dry-Up Covenant and Dedication of Easement (“Covenant”)

(For the Dry-Up of the Historical Land, including the GWIP Converted Land)

AFTER RECORDING RETURN TO:

Johnson & Repucci LLP
c/o Stephen C. Larson
2521 Broadway, Suite A
Boulder, CO 80304

3830693 Pages: 1 of 6
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Steve Moreno, Clerk and Recorder, Weld County, CO


**DECLARATION OF DRY-UP COVENANT
AND DEDICATION OF EASEMENT (BLA II)**

This DECLARATION OF DRY-UP COVENANT AND DEDICATION OF EASEMENT (this "Dry-Up Covenant and Easement") is made this 8th day of February, 2012, by Broe Land Acquisitions II, LLC, a Colorado limited liability company, whose legal address is 252 Clayton Street, 4th Floor, Denver, Colorado 80206 ("Declarant").

WHEREAS, Declarant is the owner of land located in Weld County, Colorado, which is legally described on Exhibit A attached hereto (the "Property"). The Property has historically been irrigated by water rights associated with shares of capital stock in the Whitney Irrigating Ditch Company (the "Company"), originally decreed on April 11, 1882 in Case No. 320 by the Larimer County District Court, and which shares were among the 112 shares quantified and changed by Great Western Development Company, as applicant, in Case No. 08CW65, in the District Court in and for Water Division 1 (the "Water Rights"); and

WHEREAS, as a term and condition of the decree entered in Case No. 08CW65, irrigation of the Property with the Water Rights must cease in order for the Water Rights to be utilized for their changed purposes decreed in Case No. 08CW65.

NOW, THEREFORE, Declarant declares that the Property is and shall be held, used, occupied, transferred, sold and conveyed subject to the covenants, conditions, restrictions, and easement set forth in this Dry-Up Covenant and Easement, all of which shall be covenants running with title to all portions of the Property, or equitable servitudes thereon, as the case may be, and shall be binding on all parties having any right, title or interest in the Property, and their respective successors, successors-in-title, assigns, heirs, devisees, executors, administrators, and personal representatives, and shall inure to the benefit of the Water Rights and to each owner of or persons entitled to use the Water Rights or any portion thereof:

1. Immediately upon the demand or demands of any party then owning the Water Rights or any portion thereof, and subject to the terms set forth below, the Property shall forever cease to be irrigated by the Water Rights, by any water out of the Whitney Irrigation Ditch, or tributary to the Cache la Poudre River, or by any other water rights as may be required by the District Court in and for Water Division 1 (the "Water Court"), the State or Division Engineers or any other court or agency having jurisdiction over the administration or adjudication of the Water Rights. At the election of any party then owning the Water Rights, this dry up may occur in phases and, in that event, (a) a demand to cease irrigating portions of the Property shall be made with respect to each phase of dry-up and (b) the amount of Property that shall cease being irrigated in accordance with each such demand shall be 6.1 acres of Property for every share associated with the Water Rights that is to be utilized for changed purposes as decreed in Case No. 08CW65. Any such dry-up demand may be in writing and may be recorded against the Property by the Water Rights owner making the demand, and any such recording shall be in the Weld County, Colorado real property records. Notwithstanding the right of the Water Rights

{00173835 / 2 }

owner to record its dry-up demand(s), which shall result in the permanent dry up of the Property or portions thereof in accordance with this covenant, the effectiveness of this dry-up covenant is not dependent upon any such subsequent recording. From and after making each such dry-up demand, any action may be taken on the Property by the owner of the Water Rights or any portion thereof, that is necessary in order to eliminate all consumptive use of water for irrigation or sub-irrigation purposes, or as is necessary for the Water Rights to yield the maximum amount of historical consumptive use decreed to the Water Rights in Case No. 08CW65, which is 13.69 acre-feet of consumptive use per each Company share associated with the Water Rights.

2. This Dry-Up Covenant and Easement shall not prohibit irrigation of the Property with water rights that may in the future be transferred to the Property for such use through an appropriate Water Court proceeding, including water tributary to the Cache la Poudre River; nor from irrigating the Property with water from a well or wells to be constructed in the future which are nontributary wells or, if tributary (or not nontributary), are authorized to pump pursuant to a Water Court approved plan for augmentation; nor from irrigating the Property with any other water which is not tributary to the Cache la Poudre River, to include treated water supplied by a municipality or a water district.

3. Declarant shall provide any additional information relative to the Property or usage of water thereon as may be reasonably requested by the owner of the Water Rights to give full effect to this Dry-Up Covenant and Easement.

4. Declarant hereby dedicates for the benefit of the Water Rights and owner(s) thereof a non-exclusive, perpetual easement over, under and through the Property for access to the Property as may be reasonably necessary for the purposes of conducting any monumenting, revegetation, monitoring or testing of the Property or ground water, as may be required by the Water Court or by the State or Division Engineers, to enforce and/or give full effect to this Dry-Up Covenant and Easement. Such access and activities, however, must be exercised and conducted with due care; may be exercised only after providing reasonable advance notice thereof to Declarant and its successors and assigns in and to the Property; and any damage shall be promptly restored.

5. This Dry-Up Covenant and Easement may be enforced by Declarant or by any party having any right, title or interest in and to the Water Rights, or any part thereof, their successors and assigns, or by the State or Division Engineers, at any time in any appropriate administrative action or any action at law or in equity. This Dry-Up Covenant and Easement shall forever bind Declarant, its successors and assigns in and to the Property or any portion thereof; shall run with and burden the Property; and shall run with and benefit the Water Rights and each owner of or persons entitled to use the Water Rights, or any portion thereof.

6. The prevailing party in any action to enforce the terms of this Dry-Up Covenant and Easement shall be entitled to recover its reasonable attorney fees.

7. This Dry-Up Covenant and Easement shall be recorded in the Weld County, Colorado real property records.

EXHIBIT A
to
**DECLARATION OF DRY-UP COVENANT
AND DEDICATION OF EASEMENT (BLA II)**

Legal Description of the Historically Irrigated Land

The following described parcels of land located in Weld County, Colorado:

1. Tract B, Great Western Industrial Park Subdivision, Second Filing, according to the plat recorded July 18, 2007 at Reception No. 3491164, as amended by Corrective Plat of Great Western Industrial Park Subdivision recorded August 29, 2007 at Reception No. 3500761 of the Weld County, Colorado real property records.
2. Tract A, Great Western Industrial Park Subdivision, Second Filing, according to the plat recorded July 18, 2007 at Reception No. 3491164, as amended by Corrective Plat of Great Western Industrial Park Subdivision recorded August 29, 2007 at Reception No. 3500761 of the Weld County, Colorado real property records.
3. All of the NW1/4 and that part of the SW1/4 of Section 36, Township 6 North, Range 67 West of the 6th P.M. lying east of the West County Road and north of the center of the Cache La Poudre River, County of Weld, State of Colorado.
4. Tract C, Great Western Industrial Park Subdivision, Fourth Filing, according to the plat recorded December 3, 2008 at Reception No. 3592743 of the Weld County, Colorado real property records.
5. A portion of Lot B, recorded Exemption RE-475, described as commencing at the center S1/16 corner of Section 35, Township 6 North, Range 67 West of the 6th P.M., thence N 48° 23' E 2359.52 feet to the point of beginning; thence N 0° 33' W 26.06 feet; thence N 89° 27' E 52.18 feet; thence S 0° 33' E 26.07 feet; thence S 89° 28' W 52.18 feet to point of beginning.
6. A portion of Lot B recorded Exemption RE-475, described as commencing at the center S1/16 corner of Section 35, Township 6 North, Range 67 West of the 6th P.M., thence N 48° 23' E 2359.52 feet to the point of beginning; thence N 0° 33' W 52.13 feet; thence N 89° 27' E 52.18 feet; thence S 0° 33' E 52.14 feet; thence S 89° 28' W 52.18 feet to the point of beginning, except a parcel described as N 0° 33' W 26.06 feet; thence N 89° 27' E 52.18 feet; thence S 0° 33' E 26.07 feet; thence S 89° 28' W 52.18 feet to point of beginning.
7. Commencing at the west quarter corner of Section 35, Township 6 North, Range 67 West of the 6th P.M., and considering the west line of the southwest quarter of said Section 35 to bear S 29° 52' 23" E with all other bearings contained herein relative thereto. (said bearing is a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983 (1992), determined by Geodetic (GPS) observations); thence N89° 32' 33" E, 1,072.55 feet

to the centerline of the Cache La Poudre River said point also being the point of beginning; thence generally along the centerline of said River the following twelve (12) courses:

- 1) N 46° 20' 03" W, 99.09 feet;
- 2) N 16° 46' 04" W, 85.59 feet;
- 3) N 04° 13' 02" E, 266.14 feet;
- 4) N 40° 32' 53" E, 159.44 feet;
- 5) N 54° 26' 20" E, 199.22 feet;
- 6) N 34° 05' 29" E, 124.67 feet;
- 7) N 61° 24' 16" E, 48.97 feet;
- 8) N 85° 02' 00" E, 57.59 feet;
- 9) S 79° 35' 57" E, 50.85 feet to a point on the east line of the southwest quarter of the northwest quarter of said section 35;
- 10) continuing S 79° 35' 57" E, 69.85 feet;
- 11) S 65° 08' 41" E, 141.98 feet;
- 12) S 45° 45' 54" E, 51.75 feet to a point on the north line of the S1/2 of the SE1/4 of the NW1/4 of said Section 35; thence along said north line, N 89° 34' 09" E, 1,273.30 feet to the NE corner of the S1/2 of the SE1/4 of the NW1/4 of said Section 35; thence S 10° 48' 30" E 672.09 feet to the center quarter corner of said Section 35; thence S 10° 46' 16" E, 1,148.24 feet to the center south sixteenth corner of said Section 35; thence along the east line of the SE1/4 of the SW1/4 of said Section 35, S 10° 48' 40" E, 1,127.72 feet; thence N 87° 18' 50" W, 2,326.02 feet; thence S 84° 16' 00" W, 1,441.44 feet; thence N 00° 00' 05" W, 641.71 feet to a point on the southerly top of bank of the Cache La Poudre River; thence along said southerly top of bank the following

seven (7) courses:

- 1) N 36° 05' 51" E, 64.27 feet;
- 2) N 21° 22' 15" E, 201.87 feet;
- 3) N 31° 19' 04" E, 192.28 feet;
- 4) N 42° 52' 40" E, 71.52 feet;
- 5) N 58° 40' 24" E, 68.14 feet;
- 6) N 80° 24' 35" E, 127.23 feet;
- 7) S 85° 41' 56" E, 418.10 feet to a point on the west line of the southwest quarter of said Section 35; thence along said west line, N 29° 52' 23" W, 41.57 feet to the centerline of the Cache La Poudre River; thence generally along the centerline of said river the following thirteen

(13) courses:

- 1) N 84° 13' 03" E, 73.28 feet;
- 2) N 70° 20' 38" E, 81.99 feet;
- 3) N 50° 40' 46" E, 249.50 feet;
- 4) N 39° 25' 11" E, 141.35 feet;
- 5) N 59° 00' 59" E, 61.48 feet;
- 6) N 35° 04' 53" E, 218.40 feet;
- 7) N 14° 47' 58" E, 131.45 feet;
- 8) N 24° 37' 29" W, 150.24 feet;
- 9) N 16° 13' 28" E, 94.18 feet;
- 10) N 00° 14' 38" E, 113.71 feet;
- 11) N 49° 11' 34" W, 55.89 feet;
- 12) N 75° 23' 10" W, 51.85 feet;

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Steve Moreno, Clerk and Recorder, Weld County, CO

13) N 46° 20' 03" W, 93.76 feet to the point of beginning.

8. A portion of Lot B recorded Exemption RE-475 described as beginning at the center S1/16 corner of Section 35, Township 6 North, Range 67 West of the 6th P.M., thence N 49° 13' E 2399.09 feet to the point of beginning, thence N 0° 33' W 104.29 feet; thence N 89° 26' E, 52.17 feet; thence S 0° 33' E 104.33 feet; thence S 89° 28' W 52.18 feet to the point of beginning.

9. Lot B recorded Exemption No. 0807-4-35-RE-476, as shown on the plat thereof recorded January 21, 1981, at Reception No. 1847472, being located in the S1/2 of the NE1/4 and the N1/2 of the SE1/4 of Section 35, Township 6 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado.

Exhibit B

**Depiction of the Historical Land that is the Subject of the Covenant;
and Delineation of the GWIP Converted Land
within such Depiction**

[see next page]

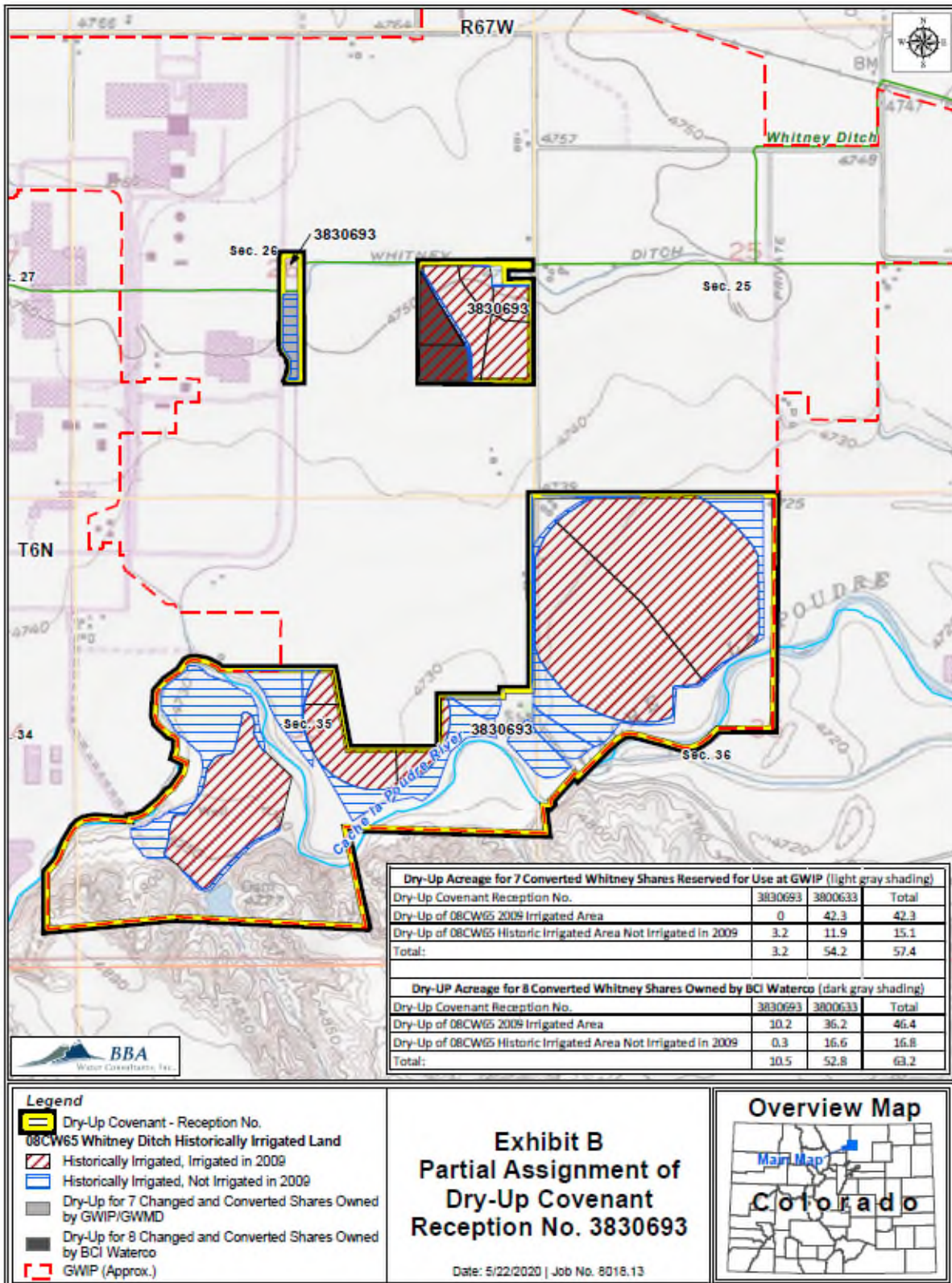


Exhibit – B-5
to
Contract for Purchase of Irrigation Company Stock

Form of GWIP Dry-Up Modifications

When recorded return to:

Acknowledgement, Grant and Modification of Declaration of GWIP Dry-Up Declarations

This Acknowledgement Grant and Modification of GWIP Dry-Up Declarations (“**Easement Modification and Grant**”) is made as of the ____ day of _____, 20__ (“**Effective Date**”), by GWIP, LLC, a Colorado limited liability company whose principal place of business is located at 252 Clayton Street, 4th Floor, Denver, CO 80206 (“**GWIP**”), for the benefit of the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555 (“**Aurora**”).

Recitals

A. GWIP is the owner of certain real property located in Weld County, Colorado, (“**Property**”) that is the subject of those several Declaration of Dry-Up Covenant and Dedication of Easement agreements listed on **Exhibit A** attached hereto (“**Existing Dry-Ups**”).

B. Pursuant to that certain Contract for Purchase of Irrigation Company Stock between BCI Waterco, LLC, a Colorado limited liability company, an affiliate of GWIP (“**BCI**”), and Aurora (“**Contract**”) BCI has conveyed one hundred eighteen (118) shares of stock in The Whitney Irrigation Company (“**Ditch Company**”), as represented by Share Certificate Number 455 and is the beneficial owner of one (1) share of stock in the Ditch Company as represented by Share Certificate Number 446 (“**Water Rights**”) to Aurora.

C. The Water Rights were previously changed as follows: (i) one hundred five (105) of the shares representing the Water Rights (including the one (1) share represented by Share Certificate Number 446) were changed in Water Division 1, Case No. 08CW65 and (ii) the remaining fourteen (14) of the shares representing the Water Rights were changed in Water Court, Water Division 1, Case No. 13CW3167. The decreed place of use for such changed shares is certain property including the land on which the Water Rights were previously used for agriculture.

D. The real property on which the Water Rights have been historically used (“**Historical Irrigated Land**”) includes the Property.

E. In Case No. 08CW65, the Water Court determined that the Property contained two hundred thirty-six (236) acres of land that were dried-up in fact at the time the decree in that case was entered (“**Dried-Up Historical Land**”).

F. The right to claim dry-up of a portion of the Dried-Up Historical Land has been reserved by GWIP in accordance with the partial assignments of dry-up covenants described in Paragraphs 1 and 2 of **Exhibit A** to this Easement Modification and Grant. The right to claim dry-up of the balance of the Dried-Up Historical Land, *i.e.*, that portion that has not been reserved by GWIP in accordance with the partial assignments of dry-up covenants described in Paragraphs 1 and 2 of **Exhibit A** to this Easement Modification and Grant, shall be referred to herein as the “**Assigned Dried-Up Historical Land**”.

G. Pursuant to the Contract, BCI is obligated to cause GWIP to deliver this Easement Modification and Grant to Aurora, which shall include GWIP’s assignment of the first and paramount right to claim dry-up of the Assigned Dried-Up Historical Land.

Agreement

NOW THEREFORE, GWIP, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby covenant and agree as follows:

1. GWIP hereby acknowledges and agrees that each of the Existing Dry-Ups are in full force and effect with respect to the respective portions of the Property subject thereto.
2. GWIP hereby grants to Aurora all the rights attributable to the “Grantee” under each of the Existing Dry-Ups as modified by this Easement Modification and Grant.
3. GWIP and Aurora, as owner of the Water Rights and beneficiary of the Existing Dry-Ups, hereby agree that the terms of each of the Existing Dry-Ups granting certain easement rights are modified to include the following additional rights, to the extent not already included therein: (a) construction of drainage and conveyance ditches, and (b) removal and filling in of all or portions of irrigation ditches or farm laterals.
4. GWIP hereby grants to Aurora the first and paramount right to claim dry-up of the Assigned Dried-Up Historical Land.
5. GWIP acknowledges that BCI’s commitment to cause GWIP to execute and deliver this Easement Modification and Grant was a material consideration in its agreement to close on the transactions provided for under the Contract with GWIP’s affiliate, BCI.
6. GWIP warrants that it is the fee owner of the Property and the successor to each of the declarants under the respective Existing Dry-Ups and that it has sufficient right title and interest

in the Property to validly execute and deliver this Easement Modification and Grant without the consent or approval of any third party.

7. GWIP warrants that no other person or entity has any ownership or encumbrance interest in the Existing Dry-Ups.

8. This Assignment may be recorded by Assignee in the office of the Weld County, Colorado, Clerk and Recorder.

[Remainder of page intentionally left blank]

Exhibit – A
to
Acknowledgement, Grant and Modification of Dry-Up Declarations
Existing Dry-Ups

1. Declaration of Dry-Up Covenant and Dedication of Easement (BLA 11) recorded October 21, 2011, at Reception No. 3800633 of the Weld County, Colorado, real property records (relative only to the land associated with the one hundred nineteen (119) shares acquired by Aurora as described in this Easement Modification and Grant, reserving from this Easement Modification and Grant the land associated with the seven (7) converted shares owned by others as set forth in the partial assignment of Reception No. 3800633 recorded on _____ at Reception No. _____.
2. Declaration of Dry-Up Covenant and Dedication of Easement (BLA II) recorded March 8, 2012, at Reception No. 3830693 of the Weld County, Colorado, real property records (relative only to the land associated with the one hundred nineteen (119) shares acquired by Aurora as described in this Easement Modification and Grant, reserving from this Easement Modification and Grant the land associated with the seven (7) converted shares owned by others as set forth in the partial assignment of Reception No. 3830693 recorded on _____ at Reception No. _____.
3. Declaration of Dry-Up Covenant and Dedication of Easement (BLA 15) recorded March 8, 2012, at Reception No. 3830694 of the Weld County, Colorado, real property records.
4. Declaration of Dry-Up Covenant and Declaration of Easement (BLA 14) recorded March 8, 2012, at Reception No. 3830695 of the Weld County, Colorado, real property records.
5. Declaration of Dry-Up Covenant and Dedication of Easement (BLA 11) recorded June 17, 2013, at Reception No. 3940785 of the Weld County, Colorado, real property records.
6. Declaration of Dry-Up Covenant and Dedication of Easement (M1 Landco) recorded October 4, 2013, at Reception No. 3968676 of the Weld County, Colorado, real property records.
7. Dry-Up Covenant and Easement (GWIP, LLC) recorded March 20, 2020, at Reception No. 4576579 of the Weld County, Colorado, real property records.

- 8. Declaration of Dry-Up Covenant and Dedication of Easement (BLA II) recorded March 31, 2014, at Reception No. 4005739 of the Weld County, Colorado, real property records (relative only to the Whitney Land as defined, identified and depicted in the partial assignment of Reception No. 4005739 recorded on _____ at Reception No. _____).

Exhibit – B-6
to
Contract for Purchase of Irrigation Company Stock

Form of Great Western Railway Dry-Up Modifications

When recorded return to:

**Acknowledgement, Grant and Modification of Great Western Railway of Colorado Dry-Up
Covenant**

This Acknowledgement Grant and Modification of Dry-Up Covenant (“**Easement Modification and Grant**”) is made as of the ____ day of _____, 20__ (“**Effective Date**”), by Great Western Railway of Colorado, LLC, a Colorado limited liability company whose principal place of business is located at 252 Clayton Street, 4th Floor, Denver, CO 80206 (“**GWR**”), for the benefit of the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555 (“**Aurora**”).

Recitals

A. GWR is the owner of certain real property located in Weld County, Colorado (“**Property**”) that is the subject of that certain Dry-Up Covenant listed on **Exhibit A** attached hereto attached (“**Existing Dry-Up**”).

B. Pursuant to that certain Contract for Purchase of Irrigation Company Stock between BCI Waterco, LLC, a Colorado limited liability company, an affiliate of GWR (“**BCI**”), and Aurora (“**Contract**”) BCI has conveyed one hundred eighteen (118) shares of stock in The Whitney Irrigation Company (“**Ditch Company**”), as represented by Share Certificate Number 455 and is the beneficial owner of one (1) share of stock in the Ditch Company as represented by Share Certificate Number 446 (“**Water Rights**”) to Aurora.

C. The Water Rights were previously changed as follows: (i) one hundred five (105) of the shares representing the Water Rights (including the one (1) share represented by Share Certificate Number 446) were changed in Water Division 1, Case No. 08CW65 and (ii) the remaining fourteen (14) of the shares representing the Water Rights were changed in Water Court, Water Division 1, Case No. 13CW3167. The decreed place of use for such changed shares is certain property including the land on which the Water Rights were previously used for agriculture.

D. The real property on which the Water Rights have been historically used (“**Historical Irrigated Land**”) includes the Property.

E. Pursuant to the Contract, BCI is obligated to cause GWR to deliver this Easement Modification and Grant to Aurora.

Agreement

NOW THEREFORE, GWR, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby covenant and agree as follows:

1. GWR hereby acknowledges and agrees that the Existing Dry-Up is in full force and effect with respect to the respective portions of the Property subject thereto.

2. GWR hereby grants to Aurora all the rights attributable to the “Grantee” under the Existing Dry-Up as modified by this Easement Modification and Grant.

3. GWR and Aurora, as owner of the Water Rights and beneficiary of the Existing Dry-Up, hereby agree that the terms of each of the Existing Dry-Ups granting certain easement rights are modified to include the following additional rights, to the extent not already included therein: (a) construction of drainage and conveyance ditches, and (b) removal and filling in of all or portions of irrigation ditches or farm laterals.

4. GWR acknowledges that BCI’s commitment to cause GWR to execute and deliver this Easement Modification and Grant was a material consideration in its agreement to close on the transactions provided for under the Contract with GWR’s affiliate, BCI.

5. GWR warrants that it is the fee owner of the Property and the successor to each of the grantor under the Existing Dry-Up and that it has sufficient right title and interest in the Property to validly execute and deliver this Easement Modification and Grant without the consent or approval of any third party.

6. GWR warrants that no other person or entity has any ownership or encumbrance interest in the Existing Dry-Up.

7. This Assignment may be recorded by Assignee in the office of the Weld County, Colorado Clerk and Recorder.

[Remainder of page intentionally left blank]

Exhibit – A
to
Acknowledgement, Grant and Modification of Dry-Up Great Western Railway of Colorado
Dry-Up Covenant

Existing Dry-Up

Dry-Up Covenant and Easement (Great Western Railway of Colorado, LLC) recorded March 20, 2020, at Reception No. 4576578 of the Weld County, Colorado, real property records.

Exhibit – C-1
to
Contract for Purchase of Irrigation Company Stock

Form of Quit Claim Deed

When recorded return to:

Quit Claim Deed
(Water Rights)

This Quit Claim Deed, made as of _____, 2020, is from Craig Stith (“**Grantor**”) to BCI Waterco, LLC, a Colorado limited liability company whose principal place of business is located at 252 Clayton Street, 4th Floor, Denver, CO 80206 (“**Grantee**”).

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has sold and quit claimed, and by these presents does sell and quitclaim unto Grantee, its successors and assigns forever, all of Grantor’s right, title and interest to one (1) share of capital stock of The Whitney Irrigation Company issued on Certificate No. 446 (“**Water Right**”).

TOGETHER, with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained Water Right.

TO HAVE AND TO HOLD the said rights above described with the appurtenances unto the Grantee, its successors and assigns.

IN WITNESS WHEREOF, Grantors have executed this deed on the date set forth above.

GRANTOR:

EXHIBIT – DO NOT EXECUTE

Craig Stith

_____ Date

State of Colorado)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Craig Stith.

Witness my hand and official seal. _____

Notary Public

My commission expires: _____

(Seal)

Exhibit – C-2
to
Contract for Purchase of Irrigation Company Stock

Form of Special Warranty Deed

When recorded return to:

Special Warranty Deed
(Water Rights)

This Special Warranty Deed, made this _____ day of _____, 2020, between BCI Waterco, LLC, a Colorado limited liability company whose principal place of business is located at 252 Clayton Street, 4th Floor, Denver, CO 80206 (“Grantor”), and the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas, whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555 (“Grantee”).

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, Grantee's heirs and assigns forever the all of the water rights described below (“Water Rights”):

- (a) The water rights represented by one hundred nineteen (119) shares of the capital stock of the Whitney Irrigation Company, a mutual ditch company organized and existing under the laws of Colorado, which share(s) are evidenced by Stock Certificate Nos. 455 and 446 (“Shares”) and the water derived there from.
- (b) All beneficial right, title and interest, if any, in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates and all other assets, rights, title or interests represented by said Shares, and in addition, and in no way limited by the foregoing, any and all other right, title or interest in The Whitney Irrigation Company represented by said Shares.

TOGETHER with all and singular hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained Water Rights, with the hereditaments and appurtenances.

Exhibit – D-1
to
Contract for Purchase of Irrigation Company Stock

Form of Stock Assignment

When recorded return to:

Irrevocable Stock Power and Assignment

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Craig Stith (“Assignor”), hereby sells, grants, transfers, and assigns to BCI Waterco, LLC, a Colorado limited liability company (“Assignee”), all of Assignor’s right, title, and interest in and to one (1) share of The Whitney Irrigation Company (the “Company” and “Company Share”), represented by Certificate No. 446. The subject Company Share represents an equitable and proportionate interest in the water rights and structure rights in the Company, including without limitation, any and all associated structures and equipment used for or associated with the diversion, conveyance, measurement, storage, or use of said water rights, and all easements, rights-of-way, licenses, permits, contract rights, and governmental approvals therefor or pertaining thereto.

Assignor hereby appoints and empowers the secretary of the Company to transfer to Assignee all of Assignor’s interest in and to the subject Company Share on the books of the Company, with full power of substitution in the premises consistent with the Company’s policies and procedures and upon surrender and cancellation of Certificate No. 446.

IN WITNESS WHEREOF, Assignor has executed this instrument on this ____ day of _____, 2020.

ASSIGNOR:

By: **EXHIBIT – DO NOT EXECUTE**
Craig Stith

Exhibit – D-2
to
Contract for Purchase of Irrigation Company Stock

Form of Stock Assignment

When recorded return to:

Irrevocable Stock Power and Assignment

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BCI Waterco, LLC, a Colorado limited liability company (“Assignor”), hereby sells, grants, transfers, and assigns to the City of Aurora, Colorado, a Colorado home-rule 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 (“Assignee”), all of Assignor’s right, title, and interest in and to one hundred nineteen (119) shares of The Whitney Irrigation Company (the “Company” and “Company Shares”), represented by Certificate Nos. 446 (1 share) and 455 (118 shares). The subject Company Shares represent an equitable and proportionate interest in the water rights and structure rights in the Company, including without limitation, any and all associated structures and equipment used for or associated with the diversion, conveyance, measurement, storage, or use of said water rights, and all easements, rights-of-way, licenses, permits, contract rights, and governmental approvals therefor or pertaining thereto.

Assignor hereby appoints and empowers the secretary of the Company to transfer to Assignee all of Assignor’s interest in and to the subject Company Shares on the books of the Company, with full power of substitution in the premises and, consistent with the Company’s policies and procedures and upon surrender and cancellation of Certificate Nos. 446 and 455, to issue to Assignee a new certificate for the one hundred nineteen (119) Company Shares hereby assigned.

IN WITNESS WHEREOF, Assignor has executed this instrument on this ____ day of _____, 2020.

ASSIGNOR:

By: **EXHIBIT – DO NOT EXECUTE** _____
Name: _____
Title: _____
Date: _____

Exhibit – E
to
Contract for Purchase of Irrigation Company Stock

Form of Water Use Agreement

Water Use Agreement between the City of Aurora and GWIP, LLC to Use Water from the Whitney Irrigation Company

This Water Use Agreement (“Agreement”) is entered into this _____ day of _____, 2020, by and between the City of Aurora, Colorado, a Colorado home-rule 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 GWIP, LLC whose address is _____, Colorado _____ (“**GWIP**”). Aurora and GWIP shall be referred to herein as “Party” and collectively as the “**Parties**”.

Witnesseth

WHEREAS, Aurora is the owner of one hundred nineteen (119) shares of stock in the Whitney Irrigation Company (“**Ditch Company**”) formerly represented by Share Certificate Nos. 445 and 446 evidencing ownership thereof (“**Ditch Shares**”).

WHEREAS, GWIP wishes to use the water attributable to one hundred eleven (111) of the Ditch Shares (“**Subject Shares**”) for irrigation of up to and not to exceed five hundred eighty (580) acres of real property owned by GWIP and depicted on the map attached as **Exhibit A** hereto (“**Irrigated Land**”); and

WHEREAS, Aurora desires GWIP to use the Subject Shares in order that the water associated with the Subject Shares (“**Subject Water**”) continues to be used for irrigation purposes until Aurora is prepared to use the Subject Shares for the purpose of supplying water for municipal and other uses to the inhabitants of the City of Aurora and others; and

WHEREAS, Aurora and GWIP desire to enter into an agreement whereby Aurora shall provide the Subject Water to GWIP when such water is available in priority and when it can be used without causing injury to any other vested water user;

WHEREAS, this Agreement will be of mutual benefit and convenience to Aurora and GWIP; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree on all the terms and conditions set forth below.

Agreement

1. Term of Agreement.

(a) The Term of this Agreement shall commence on the Effective Date, as defined below in Section 15(c), and shall continue for a minimum of seven (7) irrigation seasons following the Effective Date, until December 31, 2027 (“**Initial Term**”). This Agreement shall be terminated or extended pursuant to subparagraph (b) below. The termination of this Agreement shall not release GWIP from any obligations or liabilities incurred pursuant to the payment, use covenants, accounting responsibilities and pledge or encumbrance terms of this Agreement, as set forth below. GWIP hereby agrees, following the termination of this Agreement, to execute any documentation requested by Aurora for the purposes of documenting such termination and to consent to the recording of such documentation in the real property records for the Irrigated Land.

(b) Following expiration of the Initial Term, this Agreement shall automatically renew for three (3) successive one-year terms, beginning on January 1, 2028 (each successive term shall be referred to as a “**Renewal Term**”), unless the Agreement is terminated by Aurora following the Initial Term (or following any Renewal Term) at Aurora’s sole discretion. If Aurora desires to terminate the Agreement following the Initial Term, Aurora shall provide two (2) year’s advance written notice of such termination to GWIP no later than December 31, 2025. If the Agreement is renewed and not terminated following the Initial Term, Aurora may terminate the Agreement and prevent any successive Renewal Terms by providing written notice of termination to GWIP no later than December 31 of the year prior to when the termination is to be effective. Each Renewal Term shall be expressly subject to each of the terms and conditions set forth in this Agreement.

(c) Subject to availability and at Aurora’s sole discretion, GWIP may request and Aurora may agree to continue this Agreement for additional one (1) year extensions after the final Renewal Term or any previous extension, each additional year hereinafter referred to as an “**Additional Year.**” GWIP’s written request to continue this Agreement for each Additional Year must be received by Aurora no later than February 1 of the new Additional Year, and shall be effective only upon Aurora’s written consent. The continuance of the Term for Additional Years shall be expressly subject to each of the terms and conditions set forth in this Agreement.

2. Use of Subject Water. GWIP agrees to use the Subject Water solely for irrigation purposes on the Irrigated Land. GWIP shall not use any water other than the Subject Water for the irrigation of the Irrigated Land without the prior written permission of Aurora.

3. Quantity of Water. Subject to legal and physical availability, GWIP agrees to take and put to beneficial use the entire amount of the Subject Water in accordance with the terms of this Agreement.

4. Water Quality. Aurora does not make any representation of the quality of the Subject

Water. Aurora does not represent that the Subject Water will be acceptable for GWIP's use without treatment.

5. **Sublease of Subject Water.** GWIP may allow use of the Subject Water to the farming tenants, Western Greens, LLC, a Colorado limited liability company and NJS&D Farms, Inc., a Colorado corporation (“**Tenant Farmers**”) on the Irrigated Land during the Term; and may allow use of the Subject Water by any other tenant farmer only with prior written approval of Aurora. Such use by any tenant farmer shall not relieve or release GWIP from any of its obligations under this Agreement, it being expressly understood and agreed that GWIP shall remain primarily liable for all payments required under Paragraph 9, below, in connection with the use of the Subject Water within the time required under Paragraph 10 below, and for the full and faithful observance of the covenants, terms and conditions contained herein.

6. **Water Accounting Responsibilities.** GWIP shall report its use of the Subject Water to any Ditch Company ditch rider, the water commissioner (if the Ditch Company and/or water commissioner require), and to Aurora in such form and at such times as required by the Ditch Company and/or water commissioner and/or Aurora. GWIP's reports shall include the acres irrigated, the crops grown, the date irrigation commences, and the date irrigation ceases as well as any other matters as reasonably requested by Aurora in connection with the use of the Subject Water or supplementation of the same. If the installation of measuring devices is hereafter requested by the division or state engineer or required by any subsequent Water Court decree, in order to use the Subject Water during the Term, GWIP shall install same at its cost; and thereafter report to Aurora the amount of water diverted and used for irrigation on the Irrigated Land.

7. **Requirement to Maintain Structures.** GWIP shall be responsible for the maintenance of any headgates and measuring devices necessary to divert the Subject Water from The Whitney Irrigation Company ditch onto the Irrigated Land.

8. **Delivery of Subject Water.** Delivery of the Subject Water shall be determined by the Ditch Company pursuant to its obligation to deliver water on a pro rata basis to share owners.

9. **Consideration.** GWIP shall be responsible for payment of all Ditch Company assessments and dues associated with the Subject Shares during the Term. Aurora will pay the Ditch Company directly and invoice GWIP in arrears. Payment shall be due in full within thirty (30) days of date of the invoice in accordance with Paragraph 10 below. GWIP shall pay the entire said amount pertaining to the Subject Shares regardless of whether GWIP uses or has used any amount of the Subject Water.

10. **Payment.** All billing shall be done on forms designated by Aurora for that purpose. Aurora will invoice GWIP for the amount of the Ditch Company assessments associated with the Subject Shares during the Term, in accordance with the Notice provisions of Paragraph 15(r) below (“**Aurora’s Notice of Assessments**”). Aurora’s Notice of Assessments shall be mailed to GWIP no later than thirty (30) days after Aurora receives its notice of assessments and dues from

the Ditch Company. Payment by GWIP shall be due no later than thirty (30) days of date of Aurora's Notice of Assessments ("Due Date"). Failure by Aurora to submit invoices in a timely manner or at all shall not excuse payment of the ditch assessments and dues by GWIP. In the event of failure to make payments by the Due Date, this Agreement shall be in default by GWIP and in addition to the provisions and remedies set forth in Paragraph 13, the following shall apply:

(a) For payments not received by Aurora within thirty (30) days following the Due Date, GWIP will be assessed a late fee of ten percent (10%) of the payment amount past due or One Thousand Dollars (\$1,000.00), whichever amount is less; and

(b) For payments not received by Aurora within sixty (60) days following the Due Date, GWIP will be assessed an additional late fee of ten percent (10%) of the payment amount due or One Thousand Dollars (\$1,000.00), whichever amount is less. This late fee is to be added to the late fee assessed under subparagraph (a) of this Paragraph 10. Further, delivery of the Water Rights by Aurora will cease if payments are not received within sixty (60) days following the Due Date until receipt by Aurora of the full past due amount including accrued late fees; and

(c) For payments not received by Aurora within ninety (90) days following the Due Date, this Agreement will terminate. In that event, GWIP will be responsible for any past due amounts, including accrued late fees.

(d) Only in the event of special circumstances, as determined in Aurora's sole discretion, will Aurora reduce or waive the penalties set forth in this Paragraph 10 for failure to make payments by the Due Date and the time periods following the Due Date as set forth herein.

11. **Pledge or Encumbrance.** GWIP shall not pledge or otherwise encumber this Agreement or the Subject Water for any purpose including, without limitation, securing debt, augmenting past, present or future well depletions or repaying obligations to any ditch company or water conservancy district.

12. **Condemnation.** If any entity with the power of eminent domain, initiates or gives Notice that it intends to initiate condemnation proceedings with respect to any interest in all or a portion of the Irrigated Land, GWIP shall notify Aurora in writing within five (5) days, and provide Aurora copies of all correspondence, pleadings, and other documents regarding the proposed condemnation. At Aurora's election, the Parties shall then jointly defend any condemnation proceedings to the extent permitted by law, each at its own expense, upon the grounds, among others, that Irrigated Land is committed to public use pursuant to the Agreement.

13. **Default and Remedies.**

(a) **Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by GWIP.

(i) The failure by GWIP to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by GWIP under this Agreement.

(ii) The failure by GWIP to use the water as provided in Paragraph 2, above, in which case Aurora may withhold and cease delivery of the Subject Water.

(iii) The failure by GWIP to make such reports and accounting as required under Paragraph 6 of this Agreement, in which case Aurora may retain a consultant to complete the required accounting, and GWIP shall be responsible for the costs of such accounting including fees payable to such consultant for completion of such accounting.

(iv) The failure by GWIP to timely pay Aurora for Ditch Company assessments and dues provided for under Paragraphs 9 and 10, above, without waiving the default or limiting the liability of GWIP for payment of the same.

(b) **Remedies.** The remedies listed above are not Aurora's exclusive remedies but are in addition to any other rights or remedies which Aurora may have by reason of such default or breach. In the event that Aurora withholds the Subject Water due to the default of GWIP under this Agreement, then Aurora may terminate this Agreement, and shall be permitted to use the Subject Water or to enter into new agreements with other water users for use of the Subject Water.

14. **Sole Obligation of Aurora.**

(a) This Agreement shall never constitute a general obligation or other indebtedness of the City of Aurora, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City of Aurora.

(b) In the event of a default by Aurora of any of its obligations under this Agreement, GWIP shall have no recourse for any amounts owed to it against any funds or revenues of the City of Aurora 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 of Aurora.

15. **Miscellaneous.**

(a) **No Rights Conferred.** Except as otherwise provided in this Agreement, the Parties acknowledge that any and all water leased 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 the Subject Shares upon GWIP other than usage rights during the Term as set forth expressly herein, nor shall any future needs GWIP has for Subject Water enable GWIP to make claim against Aurora for any of Aurora's Subject Shares, other water or water rights. GWIP further acknowledges the statutory prohibition against vesting of a right for a continued lease expressed in Section 31-35-201, C.R.S., applies in these circumstances.

(b) **No Opposition to Aurora Water Court Matters.** From the date of execution of this Agreement through the conclusion hereof, GWIP agrees that neither it nor any successors, if any are allowed, will oppose Aurora in any Colorado Water Court Applications filed by Aurora involving the Subject Shares or the Subject Water.

(c) **Effective Date.** This Agreement shall be in full force and effect from the date of its execution by Aurora.

(d) **Entire Agreement of the Parties.** This writing constitutes the entire Agreement between the Parties, and supersedes all prior written or oral agreements, negotiations, representations, and understandings of the Parties with respect to the subject matter contained herein.

(e) **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. In the event of default under Paragraph 13, above, Aurora may terminate this Agreement by written Notice as set forth in this Paragraph 15.

(f) **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.

(g) **Governing Law and Venue.** This Agreement and its application shall be construed according to the laws of the State of Colorado. Venue for the trial of any action arising out of

any dispute hereunder shall be in the Arapahoe County District Court.

(h) **Failure to Perform Due to Force Majeure.** Subject to the terms and conditions in this Section, 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 use or reuse of the Subject Water through leases or other agreements 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 the years 2002-2003 in the South Platte River Basin] 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 any of the agreed upon amounts of Subject Water to GWIP, Aurora will not be entitled to any payment for the Subject Water that is not delivered. 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 ninety (90) 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 ninety (90) 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.

(i) **Intent of Agreement.** This Agreement is intended to describe the rights and responsibilities of and between the 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, GWIP, or any other entity not a party hereto.

(j) **Non-Severability.** Each Paragraph in this Agreement is intertwined with the others and are not severable.

(k) **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.

(l) **Binding Effect.** This Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, if any.

(m) **Assignment.** Neither Aurora nor GWIP may assign its rights or delegate its duties hereunder without the prior written consent of the other Party, subject to Paragraph 5 above regarding sublease to the specific Tenant Farmers approved by Aurora therein.

(n) **Successors and Assigns.** This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns if any are allowed. The Parties intend that Aurora shall not incur any liability other than those liabilities directly running to GWIP or assigns permitted under this Agreement, if any. GWIP covenants and agrees to indemnify, save and hold harmless Aurora from all liability, cost or expense of any kind, including Aurora's costs of defense, to any other party, arising in connection with or relating in any way to the execution, delivery or performance of any allowed assignment or any related document by the Parties thereto or to the consummation of any transaction in connection with such documents.

(o) **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.

(p) **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.

(q) **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.

(r) **Notice.** Any and all notices, demands or the communications desired or required to be given under any provision of this Agreement shall be given in writing (collectively, “**Notice**”) and delivered personally or sent by registered or certified mail, postage pre-paid, return receipt requested to the Parties at the following addresses, 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: Water Resources

with a copy to: City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012-1555
Attn: City Attorney

To GWIP: GWIP, LLC
c/o Manager
252 Clayton Street
Denver, CO 80206

with a copy to: Stephen C. Larson
Johnson & Repucci LLP
850 W. South Boulder Road, Suite 100
Louisville, CO 80027

Notices shall be effective (i) the next day following the date sent by an established express delivery service which maintains delivery records requiring a signed receipt, (ii) upon receipt by the addressee of a hand delivery, (iii) three (3) days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested. Notwithstanding the foregoing, the Parties may communicate with respect to Term extensions and miscellaneous matters by e-mail as follows; to Aurora via Drake Robinson at ddrobins@auroragov.org and to GWIP via Dean Brown at dbrown@broe.com or such other address as the Parties may designate by Notice in the manner provided for in this Paragraph.

(s) **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.

(t) **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.

(u) **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.

(v) **No Fees and Expenses and Apportionment.** Each of the Parties will bear its own expenses in connection with the transactions contemplated by this Agreement.

(w) **No Construction Against Drafter.** The Parties agree they jointly drafted this Agreement with each having the opportunity to obtain the advice of legal counsel and equal opportunity to contribute to its content.

(Signatures on the following pages)

City of Aurora, Colorado,
Acting by and through its
Utility Enterprise

Marshall P. Brown, General Manager

Date

Approved as to form for Aurora:

Stephanie Neitzel, Assistant City Attorney II

Date

ACS #

State of Colorado)
) ss
County of Arapahoe)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,
by Marshall P. Brown, General Manager, 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
to
Water Use Agreement

Legal Description of Irrigated Land

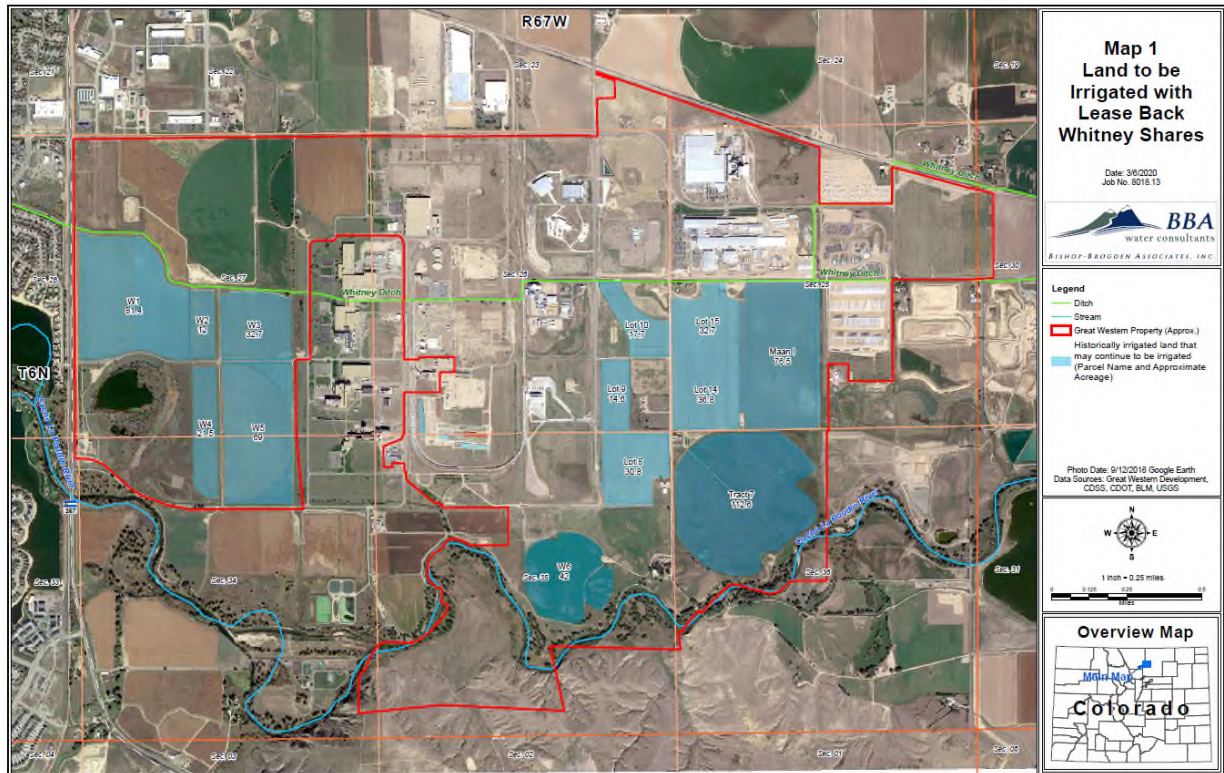


Exhibit – F
to
Contract for Purchase of Irrigation Company Stock

Form of GWIP Water Court Agreement

Water Court Agreement

This Water Court Agreement (this “**Agreement**”) is made as of the ____ day of _____, 20__ (“**Effective Date**”), by GWIP, LLC, a Colorado limited liability company whose principal place of business is located at 252 Clayton Street, 4th Floor, Denver, CO 80206 (“**GWIP**”), for the benefit of the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, CO 80012-1555 (“**Aurora**”). GWIP and Aurora shall be referred to herein as “**Party**” and collectively as “**Parties.**”

Recitals

A. GWIP is the substitute applicant under that certain water court decree issued under Water Court, Water Division 1, Case No. 07CW326 (as may be amended, “**07CW326**”).

B. Pursuant to that certain Contract for Purchase of Irrigation Company Stock between BCI Waterco, LLC, a Colorado limited liability company, an affiliate of GWIP (“**BCI**”), and Aurora (“**Contract**”) BCI has conveyed one hundred and eighteen (118) shares of stock in The Whitney Irrigation Company (“**Ditch Company**”), as represented by Share Certificate Number 455 and caused to be conveyed one (1) share of stock in the Ditch Company as represented by Share Certificate Number 446 (“**Water Rights**”) to Aurora.

C. The rights decreed under 07CW326 include a plan for augmentation and replacement for out-of-priority depletions from certain structures identified in 07CW326 (“**Augmentation Plan**”).

D. The Water Rights are among those water rights identified in 07CW326 as permissible augmentation sources for the Augmentation Plan.

E. The Water Rights were previously changed as follows: (i) one hundred five (105) of the shares representing the Water Rights (including the one (1) share represented by Share Certificate Number 446) were changed in Water Division 1, Case No. 08CW65 and (ii) the remaining fourteen (14) of the shares representing the Water Rights were changed in Water Court, Water Division 1, Case No. 13CW3167. The decreed place of use for such changed shares is certain property including the land on which the Water Rights were previously used for agriculture (“**Historical Irrigated Land**”).

F. GWIP acknowledges that Aurora intends to use the Water Rights within areas other than the Historical Irrigated Land including, without limitation, for municipal, augmentation or

exchange purposes, and that in order to effect such uses, the Water Rights will need to be further changed in an appropriate proceeding before the District Court, Water Division No. 1 (“**Water Court**”) or used pursuant to administrative approval by the Colorado Division of Water Resources (any such application or approval filed by Aurora, from time to time, collectively the “**Aurora Change**”).

G. Pursuant to the Contract, BCI is obligated to cause GWIP to deliver this Agreement to Aurora.

Agreement

NOW THEREFORE, GWIP, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby covenant and agree as follows:

1. Removal of Water Rights from Augmentation Plan. GWIP will submit such applications and/or notices to the Water Court and/or the Division Engineer and Water Commissioner as may be required to effect the removal of the Water Rights from the water rights that may be used for the Augmentation Plan (“**Application**”) on or before seventy-five (75) days following the date of this Agreement. GWIP will provide a copy of the draft Application to Aurora prior to submission to the Water Court for Aurora’s review and approval which approval shall not be unreasonably withheld. If Aurora fails to approve or object to a draft application submitted by GWIP within ten (10) days after delivery to Aurora, Aurora shall be deemed to have approved the draft Application for submittal to the Water Court. GWIP shall submit the Application and pursue the removal of the Water Rights for the Augmentation Plan with reasonable diligence at its own cost and expense.

2. Waiver and Relinquishment. GWIP on behalf of itself and its officers, directors, employees, agents or any party controlling, controlled by or under common control with GWIP hereby: (a) waives and relinquishes any right, title or interest in the Water Rights for any purpose including for use in the Augmentation Plan; and (b) agrees that it shall be solely responsible for providing all water rights (other than the Water Rights) as needed to augment depletions in accordance with the requirements of Augmentation Plan, including any obligations related to lagged depletions. Notwithstanding the foregoing, GWIP’s waiver and relinquishment shall not invalidate any separate agreement between the Parties for the use of all or any part of the Water Rights.

3. Non-Objection; Cooperation. GWIP on behalf of itself and its officers, directors, employees, agents or any party controlling, controlled by or under common control with GWIP agrees not to file a statement of opposition or otherwise object to any Aurora Change and, at Aurora’s request, GWIP shall reasonably cooperate with any Aurora Change at no cost to GWIP.

4. Representations and Warranties of GWIP.

(a) GWIP is the sole applicant with respect to 07CW326 and is authorized to submit and prosecute the Application.

(b) To GWIP's best knowledge and belief, GWIP has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to and affecting 07CW326 and that its performance of this Agreement will not result in any breach of, or constitute any default under 07CW326 or under any agreement or other instrument to which GWIP is a party or by which GWIP or 07CW326 might be bound.

(c) To GWIP's actual knowledge, there are no material adverse facts or conditions relating to the GWIP's right or ability to file and prosecute the Application.

(d) GWIP is duly organized, existing and in good standing under the laws of the State of Colorado and has not filed, voluntarily or involuntary, for bankruptcy relief within the last year under the laws of the United States Bankruptcy Code, nor has any petition for bankruptcy or receivership been filed against GWIP within the last year.

(e) The person signing below on behalf of GWIP is duly authorized to execute this Agreement and to bind GWIP with respect to this Agreement. GWIP further represents that it has capacity to enter into this Agreement.

(f) The execution and delivery of this Agreement and the performance of all obligations hereunder by GWIP do not and will not require any consent or approval of any third party, and do not and will not result in a breach of, or constitute a default under, any indenture, loan or credit agreement, mortgage, deed of trust or other agreement; and

(g) GWIP has received no written notice of any violations of any law, code, ordinance, rule or regulation or insurance policy affecting the Water Rights.

5. Notices. 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.

Aurora: City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012-1555
Attn: City Attorney

with copy to City of Aurora
15151 East Alameda Parkway, Suite 3600
Aurora, CO 80012-1555
Attn: General Manager, Aurora Water

with copy to Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202-4432
Attn: Andrew L. Meyers, Esq.

To GWIP: GWIP, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206
Attn: Legal Counsel

with copy to GWIP, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206
Attn: Greg Gallagher

with copy to Johnson & Repucci LLP
850 W. South Boulder Road, Suite 100
Louisville, CO 80027
Attn: Richard Johnson and Stephen Larson

All Notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery and such Notices shall be effective.

6. Waiver. Any waiver of any breach of any provision of this Agreement by any Party shall not constitute a continuing waiver of any subsequent breach of said party, for either breach of the same or any other provision of this Agreement.

7. Entire Agreement. 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.

8. Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

9. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns, if any. GWIP may not assign its rights or delegate its duties hereunder

without the prior written consent of Aurora, which Aurora may withhold in its sole discretion.

10. 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.

11. Multiple Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same agreement.

12. Definitions and Interpretations. Except as otherwise provided herein nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law, regulation, rule or document as it may be amended from time to time.

13. No Construction Against Drafter. This Agreement has been prepared by the combined efforts of GWIP and Aurora and their respective legal counsel as GWIP and Aurora so desired, accordingly the Parties agree there shall be no construction against the drafter of this Agreement should any dispute arise.

14. 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, GWIP 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.

15. Acknowledgement. GWIP acknowledges that BCI's commitment to cause GWIP to execute and deliver this Agreement was a material consideration in Aurora's agreement to close on the transactions provided for under the Contract with GWIP's affiliate, BCI.

[Remainder of page intentionally left blank]

City of Aurora, Colorado,
Acting by and through its
Utility Enterprise

EXHIBIT – DO NOT EXECUTE _____
Marshall P. Brown, General Manager

Date

Approved as to form for Aurora:

EXHIBIT – DO NOT EXECUTE _____
Stephanie Neitzel, Assistant City Attorney II

Date

ACS #

State of Colorado)
) ss
County of Arapahoe)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__,
by Marshall P. Brown, General Manager, 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 – G
to
Contract for Purchase of Irrigation Company Stock

Form of Easement Agreement

WATER PIPELINE EASEMENT

THIS WATER PIPELINE EASEMENT (“**Easement**”) is made as of the ____ day of _____, 2020 between GWIP, LLC, a Colorado limited liability company (“**Grantor**”) whose address is 252 Clayton Street, 4th Floor, Denver, Colorado 80206 and the City of Aurora, Colorado, a Colorado home-rule municipal corporation of the counties of Adams, Arapahoe, and Douglas Acting by and through its Utility Enterprise (“**Grantee**” or “**Aurora**”) whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012-1555.

RECITALS:

A. Grantor owns the certain real property within the Great Western Industrial Park generally located adjacent to and east of Weld County Road 23 in Section 25, Section 36, and Section 35, Township 6 North, Range 67 of the 6th PM, situated in the County of Weld, State of Colorado (hereinafter referred to as the “**Property**”), more particularly described and depicted in **Exhibit A** to this Easement and incorporated herein by reference, through which Grantee wishes to acquire an easement for the installation, maintenance, operation and repair of the certain water pipeline improvements and appurtenances described herein;

B. Grantor and Grantee have agreed to terms and conditions for the grant of this Easement to Grantee and Grantee's use and operation of the Easement; and,

C. Grantor and Grantee hereby wish to set forth their agreement and enter into this Easement.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the obligations, covenants and agreements herein set forth, the legal sufficiency of which the parties do hereby acknowledge, the parties hereto agree as follows:

1. **GRANT OF EASEMENT.**

(a) For and in consideration of the foregoing recitals, the obligations covenants and agreements herein set forth, the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid by Grantee to Grantor, the receipt and adequacy of which are hereby acknowledged by Grantor, Grantor hereby grants, bargains, sells and conveys unto said Grantee, its successors and assigns, an exclusive (subject to Grantor’s reserved rights as set forth in Section 4 below) Easement which is perpetual subject to abandonment as provided for in Section 13 below. Said Easement shall be for the purpose of a water pipeline of up to 36” in

diameter (the “**Water Pipeline**”), appurtenances and infrastructure related thereto as set forth in greater detail in Section 2 below; and shall be located in, through, on, over, under, and across the specific portion of the Property that is legally described and depicted in **Exhibit B-1** to this Easement and incorporated herein by reference. The portion of the Property legally described and depicted in **Exhibit B-1** and **Exhibit B-2** (as defined below) shall be, subject to Grantee’s relocation rights provided for in Section 1(b) below, the “**Easement Property.**”

(b) Grantee Relocation Rights.

(i) Grantor acknowledges and agrees that the location of the Easement Property located south of the point identified on **Exhibit B-1** as “SS” (such point the “**Southern Point**” and such portion of the Easement Property, the “**Southern Easement Area**”) may be modified by Grantee in accordance herewith to accommodate Grantee’s operational and construction goals.

(ii) Grantor acknowledges and agrees that the location of the Easement Property located north of the point identified on **Exhibit B-1** as “NN” (such point the “**Northern Point**” and such portion of the Easement Property, the “**Northern Easement Area**”) may be modified by Grantee in accordance herewith to accommodate Grantee’s operational and construction goals including, without limitation as may be required to accommodate the requirements of the Whitney Irrigation Company for installation of a new headgate for the diversion of water from the Whitney Irrigation Company ditch. In making any such modification, Grantee shall assure (a) that the western edge of the Northern Easement Area remain as close to the eastern edge of the Weld County Road 23 right of way as is reasonably practical; (b) that the Northern Easement Area does not encroach upon encumbrances of record existing as of the date of this Easement; and (c) there shall be no Surface Infrastructure in the Northern Easement Area between Station 11+10 and Station 12+90 as depicted on **Exhibit C-1** and **Exhibit C-2** to this Easement and incorporated herein by reference.

(iii) Accordingly, Grantee shall be entitled to install Infrastructure (as defined below) in areas within the Property south of the South Point or north of the North Point, which areas are outside of the Southern Easement Area or the Northern Easement Area as applicable, upon prior written notification to and approval by Grantor. Such notification shall specifically describe the facilities sought to be installed outside of the Easement Property, the location of such facilities (including the anticipated depth of such Infrastructure, which shall be in accordance with the Depth Requirement (as defined in Section 2(b) below) and the location of the proposed modified boundaries of relevant portions of the Easement Property. Grantor’s approval of such location(s) outside of the Easement Property shall not be unreasonably withheld, conditioned or denied. If Grantee does install any infrastructure south of the South Point in an area other than the Southern Easement Area then all or any portion of the Southern Easement Area shall be relocated as necessary to incorporate the actual location of such Infrastructure; provided that such new area is approved by Grantor and shall not exceed two paths of 60 feet in width. If Grantee does install any Infrastructure north of the North Point in an area other than the Northern Easement Area then all or any portion of the Northern Easement Area shall be relocated as necessary to incorporate the actual location of such Infrastructure; provided that such new area is approved by Grantor and shall not exceed a single path of 30 feet in width.

(iv) In either such case, following Grantor's approval of the relocated Northern and/or Southern Easement Area and installation of the Infrastructure in the approved new location, Grantee shall memorialize via survey and legal description the revised and relocated Easement Property (including a corresponding 20-foot wide Temporary Construction Easement Area and shall provide Grantor a copy of said survey and legal description for review and comment. Said survey and legal description shall be of the entirety of the Easement Property, with the revised and relocated Southern Easement Area or Northern Easement Area, as applicable, incorporated therein ("**New Survey and Description**"). Upon Grantor's confirmation of the New Survey and Description, the parties shall execute an amendment to this Easement, utilizing the New Survey and Description as replacement and superseding **Exhibit B-1** and **Exhibit B-2** respectively; and utilizing a replacement and superseding **Exhibit C-1** and **Exhibit C-2** consistent therewith. Grantee shall promptly thereafter record such amendment to this Easement in the Clerk and Recorder's Office in the County of Weld, State of Colorado. Grantor shall not disapprove of the relocated Easement Property unless such area (i) is incompatible with Grantor's intended use of such area or the immediately adjacent portions of the Property in Grantor's reasonable discretion or (ii) does not conform to the conditions of this Section 1(b) or (iii) includes property located outside of the Property. Notwithstanding the foregoing, Grantor acknowledges and agrees that Grantee must be able to tie its Water Pipeline into a new headgate at a location along the Whitney Irrigation Company ditch as approved by the Whitney Irrigation Company and the specific points for return of water to the Cache la Poudre River to permit Grantee's compliance with the requirements of applicable authorities having jurisdiction over Grantee's use of the Water Rights and accordingly, Grantor shall not withhold consent to a relocation required to satisfy such conditions. Installation of Infrastructure within the relocated Easement Property is governed by Section 2 below.

(c) If the Northern Easement Area (including as the same may change in accordance with Section 1(b) above) or the Temporary Construction Easement Area (as defined below) adjacent thereto encroaches on either of the two existing out buildings located just east of the Northern Easement Area, then promptly following Grantee's notice, Grantor shall, at Grantor's cost and expense, cause such building or buildings to be demolished, including any foundation therefor in accordance with applicable law. If Grantor fails to commence such demolition within 120 days following such Grantee notice, Grantee may cause such demolition to be effected and any remediation required under applicable law at Grantor's cost and expense.

(d) Grantor warrants that it has full right and lawful authority to grant this Easement and promises and agrees to defend, indemnify and hold harmless Grantee in the exercise of its rights herein against any defect in Grantor's title to the Property, the Easement Property and the Temporary Construction Easement Area (defined below) other than matters that appear of record at the Clerk and Recorder's Office in the County of Weld, State of Colorado as of the date of this Easement or Grantor's right to grant this Easement.

2. USE OF EASEMENT BY GRANTEE. The right to use this Easement shall belong to Grantee and its successors and assigns for the benefit of their respective, employees, licensees, contractors, invitees and all those acting by or on behalf of Grantee for the purposes set forth below. For the purposes of clarity and the avoidance of doubt, references to the rights and the obligations of "Grantee," associated with Grantee's Infrastructure and use of the Easement Property or the Temporary Construction Easement Area (defined below) shall be deemed to

include Grantee's successors, assigns, employees, licensees, contractors and invitees; provided that Grantee's rights to review and approve Grantor's exercise of Grantor's retained rights under this Agreement shall inure only to Grantee and its successors and assigns.

(a) Infrastructure. To install, construct, reconstruct, locate, relocate, survey, maintain, enlarge, alter, repair, replace, use, operate, control, inspect, and remove Grantee's underground pipes, casings, wires, conduits and other underground infrastructure necessary or convenient to the Water Pipeline ("**Underground Infrastructure**"), along with such surface pipes, culverts, valves, ventilators, manholes flumes, solar panels and other surface facilities or appurtenances, including, fences and gates around the same and river bank stabilization and revegetation and, with respect to the Southern Easement Area, open channels ("**Surface Infrastructure**" and the Underground Infrastructure, collectively, the "**Infrastructure**"), all as may be necessary or convenient for transmission of water via the Water Pipeline from the Whitney Irrigation Company ditch to storage or to two points on the Cache la Poudre River. Notwithstanding anything to the contrary herein, Grantor acknowledges and agrees that Grantee shall be entitled to maintain two pipelines within the Easement Area during a reasonable period for replacement of all or any portion of the Infrastructure and only for so long as is reasonably necessary to permit the continued transmission of water during the period of such replacement. There shall be no Surface Infrastructure allowed between Station 11+10 and Station 12+90 as depicted on Exhibit C-1 and Exhibit C-2. Grantee agrees that the Water Pipeline underlying the designated location of the Railway Crossing (as defined in Section 4(a) below) over the Easement Property at Stations 11+10 to 12+90 as depicted on **Exhibit C-1** and **Exhibit C-2** shall be designed and constructed in accordance with the most stringent of the OmniTRAX and railroad industry standards and all safety factors and calculations as required by the latest American Railway Engineering and Maintenance-of-Way Association standards in effect at the time of the installation of such Water Pipeline ("**AREMA Standards**"), including, without limitation the Cooper E80 live load configuration standards referenced in the AREMA Standards.

(b) Depth Requirement. The top of the Water Pipeline shall be buried at any given point along the length of the Easement Area approximately within the range of depths as shown on the attached Exhibit C-1 and Exhibit C-2, which depths are established by Grantor to reflect the final grading plan for the Great Western Industrial Park (the "**Final Design Grade**") and, with respect to all depths set forth thereon, shall be the applicable "**Depth Requirement**" for the area indicated; provided, that the actual location of the Water Pipeline may vary from the particular established as provided for in this Easement.

(i) If the Final Design Grade has not been physically achieved within the Easement Property at the time Grantee constructs any Underground Infrastructure, Grantee may perform such fill over the Easement Property as may be needed in Grantee's discretion to preserve or protect such infrastructure following construction thereof. Such fill by Grantee shall be coordinated with Grantor in accordance with Section 2(c) below.

(ii) If the Final Design Grade has not been physically achieved within the Easement Property at the time Grantee wishes to construct any Surface Infrastructure, Grantee may, with respect to any such Surface Infrastructure, either: (A) perform such fill over the Easement Property as may be needed to raise the grade to the Final Design Grade adjacent to

such Surface Infrastructure; or (B) install such Surface Infrastructure at or above the then-existing grade, in which case Grantee will cooperate with Grantor to raise such Surface Infrastructure to the Final Design Grade at such time as Grantor performs grading to the Final Design Grade adjacent to such Surface Infrastructure which work shall be performed by Aurora at Aurora's expense. If Grantee wishes to install Surface Infrastructure within a flood plain as determined by any authority having jurisdiction over the same ("**Governing Authority**") and such Governing Authority determines that the particular Surface Infrastructure that Grantee wishes to install within the flood plain requires additional fill over and above the Final Design Grade, then Grantee and Grantor shall in accordance with Section 2(c) below, reasonably cooperate to assure that the fill specified by the Governing Authority in the planned location(s) of such Surface Improvements is physically achieved by Grantee at Grantee's expense prior to construction of such Surface Infrastructure in the flood plain, in order to assure compliance with the requirements of the Governing Authority for such Surface Infrastructure.

(iii) Notwithstanding the Depth Requirement, the depth of the Water Pipeline and associated pipes connected thereto, (A) may begin rise to daylight in the Northern Easement Area at Station 11+10 and may reach the ground surface at or near the Whitney Irrigation Company ditch; and (B) may, in the Southern Easement Area, starting at Station 52+00 begin to rise to daylight to an open channel or channels and may continue as an open channel or channels continuing south to the Cache la Poudre River. Both such areas described above are identified on **Exhibit C-1** as areas where "Depth as Required by Grantee to Tie-In."

(iv) Notwithstanding the Depth Requirement, the depth of the Water Pipeline and associated pipes connected thereto, may begin to lower at approximately Station 46+00 and go as deep as necessary to avoid other existing or anticipated water pipelines and may thereafter rise to daylight as provided for in Section 2(b)(iii) above.

(v) The foregoing allowed deviations from the Depth Requirement are subject to Grantor's approval in accordance with the procedures and standards set forth below in Section 2(c). Such approval shall not be unreasonably withheld to the extent such depths are reasonably necessary to permit the anticipated operations of the Infrastructure including, without limitation: (a) with respect to the Northern Easement Area depth deviations described above, such depths as are reasonably required for the diversion of water from the Whitney Irrigation Company ditch; and (b) with respect to the Southern Easement Area, such depths as are reasonably required to permit compliance with the requirements of applicable authorities having jurisdiction over Grantee's use of the Water Rights (as defined in Section 7 below) including the requirements of applicable water court decrees with respect to the Water Rights or any other authorities having jurisdiction over the Property.

(c) Grantor Review and Approval of Plans for Infrastructure. Prior to construction of any Infrastructure, Grantee shall notify Grantor in writing of the Infrastructure sought to be installed by the Grantee within the Easement Property. Such notice shall provide Grantor with plans for and shall identify the location of such Infrastructure upon and below the surface of the Easement Property (including the depth thereof) (collectively, "**Infrastructure Plans**"), so that Grantor may, prior to construction thereof, assure that such locations comply with the terms of this Easement. To the extent the Infrastructure Plans do comply with the Terms of this Easement or can be made to comply with modifications, Grantor shall approve the same (with such

modifications if applicable). In the case of Surface Infrastructure, Grantor may impose such color, screening, site plan or aesthetic conditions as Grantor reasonably may require to achieve compatibility of the Surface Infrastructure with other development on the Property. Grantor's approval of such Infrastructure Plans, with or without modifications or conditions (collectively, "**Grantor Approval**"), shall not be unreasonably withheld, conditioned or delayed. Any denials or conditions of approval shall be with the express intent and effect of eliminating unreasonable interference with the operations on, or development plans for, the Property and to protect the compatible use of the Easement Property by Grantor, its successors and assigns in and to the Property, without unreasonable interference with Grantee's use thereof. It shall be unreasonable for Grantor to reject or condition acceptance of any Infrastructure Plans unless and only to the extent that such plans are inconsistent with the standards set forth in this Easement. The parties shall at all times reasonably cooperate with each other to accommodate their respective joint use of the Easement Property. Upon completion of the Infrastructure, Grantee shall provide to Grantor a full set of as-built plans for the Infrastructure, in both ACAD and PDF formats.

(d) Grantee Easement Violations and Corrective Action.

(i) Any Infrastructure that (a) lies outside of the Easement Property (except as otherwise provided in Section 1(b)), (b) violates the Depth Requirement, (c) is not in accordance with Grantor Approval, or (d) otherwise violates the terms of this Easement (collectively, "**Grantee Easement Violation**"), which violation causes unreasonable interference with the use of or obstructs the operation of Grantor's retained rights in the Easement Property, shall be relocated or otherwise made to comply with Easement ("**Corrective Actions**") by Grantee at its sole cost and expense, unless the nonconforming aspects of such Infrastructure were approved in advance, in writing, by Grantor.

(ii) Grantee shall be provided specific and documented written notice of any Grantee Easement Violation and Grantee shall, within Forty Five (45) days following such notice, commence the Corrective Actions and with diligence promptly complete the Corrective Actions. Should Grantee fail to timely commence Corrective Actions in regard to any such notice of Grantee Easement Violation, Grantor shall have the right to take such Corrective Action at the sole expense of Grantee, which shall promptly reimburse Grantor for any expense related thereto. Grantee shall not in any manner unreasonably interfere with the Grantor's right to use the Easement Property as set forth herein.

(e) Access. Grantor hereby grants, bargains, sells and conveys unto said Grantee, its successors and assigns, a non-exclusive Easement which is perpetual subject to abandonment as provided for in Section 13 below of entry and access including ingress and egress to and from the Easement Property, though, on, over, and across the Property at any and all times deemed necessary or convenient by Grantee to exercise the rights acquired in this Easement ("**Access**"). Such Access shall at all times be via the least intrusive and most direct route over the Property to the Easement Property that is reasonably available from Weld County Road 23. The precise location of such Access may be reasonably designated by Grantor from time to time.

(f) Removal of Obstructions. In accordance with all local, State and Federal requirements and guidelines, Grantee shall have the right to relocate or control animal species and relocate, trim, cut, fell and remove any material, vegetation, underbrush, trees, structures,

obstructions or obstacles located on or within the Easement Property, if, and to the extent that, any of the foregoing shall materially interfere with Grantee's use of this Easement (each, an "**Obstruction**"). Notwithstanding any of the foregoing, nothing installed within the Easement Property in accordance with Section 4 below or otherwise with Grantee's prior approval shall be deemed an "Obstruction."

(g) Right to Request Relocation at Grantor's Cost. Should any Infrastructure that fully complies with this Easement and with Grantor Approval be later determined by Grantor to nevertheless be in a location that Grantor determines is not compatible with Grantor's intended use of the Easement Property pursuant to Grantor's retained rights therein, Grantor may notify Grantee of such incompatibility and request that Grantee, at Grantor's sole cost and expense, relocate or otherwise alter the Infrastructure so as to eliminate such incompatibility. In such event, Grantee may accept or deny the request in Grantee's reasonable discretion.

3. CONSTRUCTION EASEMENT. In addition to the Easement, Grantor hereby grants to Grantee, its successors and assigns, a 20-foot wide temporary, non-exclusive construction easement in, to, though, on, over, and across the surface of the Property adjacent to the Easement Property (the "**Temporary Construction Easement**").

(a) Construction Easement Area. The portion of the Property to be occupied by the Temporary Construction Easement (the "**Temporary Construction Easement Area**") is legally described and depicted on the attached on **Exhibit B-1** attached hereto and incorporated herein by reference.

(b) Purpose. The Temporary Construction Easement shall be used by Grantee, its successors and assigns, licensees, invitees, contractors and all those acting by or on behalf of Grantee for constructing, installing, repairing and replacing the Infrastructure (the "**Construction Work**") and for reasonable access, ingress, and egress reasonably necessary to accomplish the Construction Work. The Temporary Construction Easement shall be used only during periods of Construction Work. The term of the Temporary Construction Easement shall be limited to such time as reasonably necessary to perform any Construction Work, from time to time. Prior to each construction project for which use of the Temporary Construction Easement will be necessary, Grantee shall notify Grantor in writing of its anticipated need to use the Temporary Construction Easement and the anticipated commencement and completion of the Construction Work requiring use of the easement. Grantor may impose such reasonable conditions upon use of the Temporary Construction Easement for each such construction project as may be reasonably necessary to assure that said use of the Temporary Construction Easement does not unreasonably interfere with Grantor's construction work or other operations on the Grantor's Property. The parties shall at all times reasonably cooperate with each other to accommodate their respective joint use of the Temporary Construction Easement Area.

4. USE OF EASEMENT PROPERTY BY GRANTOR. Grantor hereby reserves for itself and its successors, assigns for the benefit of their respective, employees, licensees, invitees, contractors and all those acting by or on behalf of Grantor the right to use and enjoy the Easement Property and any portions thereof for any and all uses and purposes that are not inconsistent with and do not materially interfere with the use and enjoyment of the Easement by Grantee, in Grantee's reasonable discretion. Without limiting the generality of the foregoing,

Grantor may use the Easement Property for any purpose consistent with the rights and privileges herein granted and which will not interfere with or endanger Grantee's facilities therein, or unreasonably interfere with the use of any of the rights herein granted subject in all cases to the terms of this Easement. For the purposes of clarity and the avoidance of doubt, references to the rights and the obligations of "Grantor" associated with Grantor Improvements and use of the Easement Property shall be deemed to include Grantor's successors, assigns, employees, licensees, invitees and contractors; provided that Grantor's rights to review and approve Grantee's exercise of Grantee's rights under this Agreement shall inure only to Grantor and its successors and assigns.

(a) Grantor Improvements. Grantor may install landscaping, agricultural crops, sod, grass, hardscaping, woody shrubs, ground level parking surfaces, sidewalks, curbs, gutters, a single 90 degree railway crossing the Easement Property at Station 11+10 to Station 12+90, as depicted on **Exhibit C-1** and **Exhibit C-2** attached hereto ("**Railway Crossing**") *NTD: Subject to review of Ex C-1 and C-2*, temporary roads upon the surface of the Easement Property and permanent roadways and driveways crossing the Easement Property at 90 degrees, *provided however*, that vehicles travelling on such roadways and driveways shall not exceed 80,000 pounds Gross Vehicle Weight ("**GVW**"), *except for* (i) vehicles configured in a manner that a GVW in excess of 80,000 pounds is permitted on local, State, and Federal roadways, and (ii) when the path of travel of vehicles in excess of 80,000 pounds is bridged over the Easement Property via dirt, structural bridging, or other means of bridging that is designed to prevent damage to the Underground Infrastructure underlying the Easement Property in accordance with commonly accepted engineering standards (collectively, "**Protective Bridging**"). Grantor's use of Protective Bridging is subject to Grantee's review and approval in accordance with Section 4(b). Grantor shall not build, construct, erect, install or permit the building, construction, erection or installation of any permanent building, nor shall Grantor impound water or allow the impoundment of water within the Easement Property. If Grantor does install the Railway Crossing provided for above, Grantor shall construct and operate consistent with the standards provided for in Section 2(a) above. Grantor shall comply with the Final Design Grade on or over the Easement Property, except with prior written permission to deviate therefrom received from Grantee. Grantor shall not plant trees on the Easement Property without the prior written permission of Grantee. The parameters of Grantor's use of the Easement Property below the grade established in the Final Design Grade is governed by Section 16 hereof.

(b) Grantee Review and Approval of Grantor Improvements. In the event Grantor seeks to use the surface or subsurface of the Easement Property for the construction or installation of any improvements, Grantor shall notify Grantee in writing of the surface or subsurface improvements that are sought to be installed by the Grantor within the Easement Property ("**Grantor Improvements**"). Such notice shall provide Grantee with plans for and shall identify the location of such Grantor Improvements upon and below the surface of the Easement Property (including the depth thereof), so that Grantee may, prior to construction thereof, assure that such improvements and locations comply with the terms of this Easement. To the extent the proposed Grantor Improvements do comply or can be made to comply with modifications, Grantee shall approve the same (with such modifications if applicable). The parties shall at all times reasonably cooperate with one another in accommodating each other's uses within the Easement Property. Grantee's approval of such Grantor Improvements, with or without modifications or conditions (collectively, "**Grantee Approval**"), shall not be

unreasonably withheld, conditioned or delayed. Any denials or conditions of approval shall be with the express intent and effect of eliminating unreasonable interference with Grantee's operations on, or development plans for, the Easement Property and to protect the compatible use of the Easement Property by Grantees, without unreasonable interference with Grantor's use thereof. It shall be unreasonable for Grantee to reject or condition acceptance of any Grantor Improvements unless and only to the extent that such improvements are inconsistent with the standards set forth in this Easement. Upon completion of the Infrastructure, Grantor shall provide to Grantee a full set of as-built plans for the Grantor Improvements, in both ACAD and PDF formats.

(c) Grantor Easement Violations and Corrective Action.

(i) Any Grantor Improvements that (a) are not in accordance with Grantee Approval or (b) otherwise violate the terms of this Easement ("**Grantor Easement Violation**"), which violation causes unreasonable interference with the use of or obstructs the operation of Grantee's rights in the Easement Property, shall be relocated or otherwise made to comply with Easement ("**Grantee Corrective Actions**") by Grantor at its sole cost and expense, unless the nonconforming aspects of such Grantor Improvements were approved in advance, in writing, by Grantee.

(ii) Grantor shall be provided specific and documented written notice of any Grantor Easement Violation and shall, within Forty Five (45) days following such notice, commence the Grantee Corrective Actions and with diligence promptly complete the Corrective Actions. Should Grantor fail to timely commence Grantee Corrective Actions in regard to any such notice of Grantor Easement Violation, Grantee shall have the right to take such Corrective Action at the sole expense of Grantor, which shall promptly reimburse Grantee for any expense related thereto. Grantor shall not in any manner unreasonably interfere with the Grantee's right to use the Easement Property as set forth herein.

(d) Right to Temporarily Remove Grantor Improvements. In connection with any Construction Work to be performed by or on Grantee's behalf, Grantee shall be entitled to temporarily remove any Grantor Improvements to the extent such removal may be reasonably necessary to perform such Construction Work, provide that: (i) Grantee shall cause such Grantor Improvements to be restored to substantially the same condition as existed prior to such removal; (ii) with respect to the temporary removal of any Grantor Improvements that provide utility services to Grantor, such temporary removal shall be coordinated with Grantor to prevent service interruptions during the period of such temporary removal; (iii) such removal, service interruption prevention efforts (as applicable) and restoration shall be at performed by Grantee at Grantee's sole cost and expense; and (iv) Grantee shall provide Grantor no less than five (5) day's advance written notice of any planned removal of Grantor Infrastructure, or such longer advance notice as may be required to assure no interruption of utility services to Grantor's Property. However, in the case of emergency work needing to be performed on the Infrastructure, Grantee's notice to Grantor of the need to conduct emergency work activity, with or without the need to remove Grantor Infrastructure, shall be as soon as practical under the circumstances.

(e) Right to Request Relocation at Grantee's Cost. Should any Grantor Improvements that fully comply with this Easement and with Grantee Approval be later determined by Grantee to nevertheless be in a location that Grantee determines is not compatible with Grantee's intended use of the Easement Property, Grantee may notify Grantor of such incompatibility and request that Grantor, at Grantee's sole cost and expense, relocate or otherwise alter the Infrastructure so as to eliminate such incompatibility. In such event, Grantor may accept or deny the request in Grantor's reasonable discretion.

5. MAINTENANCE. Grantee shall maintain all Infrastructure it installs on, in or under the Easement Property. Other portions of the Easement Property and Grantor Infrastructure shall be maintained by Grantor, its successors or assigns. Grantee agrees that after it has exercised its rights to use this Easement in any manner that disturbs the surface of the Easement Property, it will restore said surface to a condition that is the same or as good a condition as it was prior to the use of this Easement, except as the surface may be permanently modified by the installation of Infrastructure. Grantee agrees that it shall restore any of Grantor's Improvements damaged by Grantee which are within the Easement Property in compliance with Section 4 hereof. Grantor agrees that it shall restore any Infrastructure damaged by Grantor which are within the Easement Property in compliance with this Easement.

6. SOLE OBLIGATION OF UTILITY ENTERPRISE.

(a) This Easement shall never constitute a general obligation or other indebtedness of the City of Aurora (the "**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 Easement, Grantor 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 Easement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City.

7. ASSIGNABILITY. In connection with any sale, trade or other transfer of all or substantially all of The Whitney Irrigation Company stock acquired by the named Grantee from BCI Waterco, LLC pursuant to that certain Contract for Purchase of Irrigation Company Stock with an effective date of [REDACTED], 2020 ("**Water Rights**"), Grantee shall have the right to assign all or any portion of the rights herein granted, without approval of Grantor. Any other assignments of this Easement by Grantee shall be valid and effective only upon the advance written consent of Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.

8. BENEFITS AND BURDENS. The benefits and burdens of this Easement shall be binding upon and shall inure to the benefit of Grantee and Grantor, their respective successors or assigns.

9. RUNS WITH THE LAND. This Easement shall run with the Property, the Easement Property; and, for the duration of the Temporary Construction Easement as defined in Section 3 above, the Temporary Construction Easement Area. This Easement shall be recorded at the Clerk and Recorder's Office in the County of Weld, State of Colorado.

10. CONSTRUCTION. Whenever used herein, the singular shall include the plural, the plural the singular; and the use of any gender shall be applicable to all genders.

11. INTEGRATION. The undersigned agree that neither has made or authorized any agreement with respect to the subject matter of this Easement other than expressly set forth herein, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either party, or its agents or employees, hereto.

12. APPLICABLE LAW; VENUE. The terms of this Easement shall be interpreted and enforced in accordance with the laws of the State of Colorado. The parties agree that venue for any dispute between Grantor and Grantee shall be in the District Court for Weld County, Colorado.

13. ABANDONMENT. Grantee shall not be deemed to have abandoned its rights under this Easement and no permanent abandonment of this Easement by Grantee or Grantee's successors or assigns shall be effective without written notice to Grantor of Grantee's intent to so abandon. If Grantee gives written notice of its intent to abandon this Easement then ownership of all facilities shall pass to Grantor without warranty of any kind, express or implied; unless removal by Grantee is requested in writing by Grantor ("**Removal Notice**"). If Removal Notice is given, Grantee shall have six months from the date of such notice in which to remove all Infrastructure placed by Grantee within said Easement. To the extent that Grantee fails to remove all or any portion of said Infrastructure within said six month period, then Grantee shall be liable to Grantor for any removal costs incurred by Grantor; and, other than such reimbursement costs, Grantee shall thereafter be released from any and all liability with respect to the presence of such Infrastructure within the Easement Property.

14. AUTHORITY. Grantor warrants that he/she is the owner of the Easement Property in fee simple absolute and has full and lawful authority to grant this Easement.

15. NOTICE. 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, (iii) certified or registered mail, postage prepaid, return receipt requested, or (iv) nationally recognized overnight courier service to the Parties at the following address, or at such other address as the Parties may designate by Notice in the above manner.

To Buyer: City of Aurora
15151 East Alameda Parkway, Suite 3200
Aurora, CO 80012-1555
Attn: Real Property Services

with copy to City of Aurora
15151 East Alameda Parkway, Suite 3600
Aurora, CO 80012-1555
Attn: General Manager, Aurora Water

with copy to City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012-1555
Attn: City Attorney

with copy to Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202-4432
Attn: Andrew L. Meyers, Esq.

To Seller: GWIP, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206
Attn: Legal Counsel

with copy to GWIP, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206
Attn: Greg Gallagher and Dean Brown

with copy to Johnson & Repucci, LLP
850 W. South Boulder Road, Suite 100
Louisville, CO 80027
Attn: Richard Johnson and Stephen Larson

All Notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery and the Notice shall be effective.

16. GUIDELINES FOR WORKING WITHIN THE EASEMENT PROPERTY AND CROSSING UNDERGROUND INFRASTRUCTURE. Grantee and Grantor acknowledge that

Grantor will be required from time to time to (a) work in, around, above, beneath and adjacent to the Easement Property and the Infrastructure (collectively, “**Work**” or “**Working**”) and (b) install Grantor Improvements that cross Underground Infrastructure (“**Cross**” or “**Crossing**”). The approval procedures governing such Grantor activities are set forth in Section 4 hereof. The following establishes the parameters of location for such activities and improvements. For purposes of all standards related to adjacency and Crossings as set forth in this Section 16, the term “Underground Infrastructure” shall mean, for Grantor’s Improvements installed prior to the installation of the Water Pipeline, the separation between Grantor’s Improvements and the future Water Pipeline, within the area bounded by the width of the Easement Area and the upper and lower depths of the Depth Requirement. Grantor’s Work shall not be regulated by this Section 16 prior to when the Water Pipeline is installed.

(a) Subjacent and Lateral Support. Grantor covenants and agrees that Grantee shall have the right to subjacent and lateral support of the Underground Infrastructure and Surface Infrastructure to whatever extent is necessary or desirable for the full, complete and undisturbed enjoyment of the rights of Grantee under this Easement. It is specifically agreed between the parties that Grantor shall take no action which would impair the lateral or subjacent support of the Water Pipeline or appurtenances within the Easement Property. Grantor and Grantee agree to the parameters set forth below for subjacent and lateral support within the Easement Property:

(i) When Working underground and adjacent to (on either side of) the Underground Infrastructure, Grantor shall remain 5 feet away from the Underground Infrastructure.

(ii) When (A) Working underground and over or under Underground Infrastructure or (B) Crossing over or under Underground Infrastructure, Grantor shall remain 2 feet away from the Underground Infrastructure.

(iii) Grantor shall not install sub-surface Grantor Improvements in the Easement Property parallel to Grantee’s Underground Infrastructure. Grantor shall Cross Underground Infrastructure at angles of approximately 90 degrees.

(b) When Working above ground and overtop the Underground Infrastructure, Grantor shall follow the following guidelines:

(i) Fill overtop the Underground Infrastructure shall not exceed 3 feet over Final Design Grade

(ii) The maximum deviation from the Final Design Grade reducing the coverage overtop the Underground Infrastructure shall be the amount of such reduction from Final Design Grade that would result in the top of the Underground Infrastructure being no less than 4 feet below such reduced grade.

(iii) Vibratory compaction equipment shall not be used overtop Underground Infrastructure except as provided in Section 16(b)(vii) below.

(iv) “Overtop” shall mean 10 feet (either side) of the centerline of the Underground Infrastructure.

(v) Any trench or excavation Overtop shall be backfilled to the original ground line using only suitable soft earth material. The backfill material shall be deposited in layers not to exceed 8 inches, loose measure, for the full width of the trench. Layers shall be brought up uniformly and compacted with mechanical tampers capable of exerting a blow at least equivalent to 250 pounds per square foot, to 95% of Standard Proctor Maximum Density. The moisture content of the material shall be adjusted as required to secure the above density. The amount of water used shall be sufficient to obtain the maximum density specified. When moisture is in excess of that necessary for proper compaction, Grantor shall be required to grade, mix or otherwise process wet material to proper moisture content or haul in suitable material. Tamping equipment shall be subject to the prior written approval by the Grantee.

(vi) Grantor shall not stockpile or permit others to stockpile construction or building materials within the Easement Area.

(vii) Construction vehicles and construction equipment traveling over the Easement Property shall not exceed 80,000 pounds GVW, unless the travel path of such vehicles is bridged over the Easement Property via Protective Bridging (as defined in Section 4(a) above).

[remainder of page intentionally left blank]

EXHIBIT A

Legal Description of Property

EXHIBIT A

That parcel of land described as Parcel 1 in that Special Warranty Deed recorded at Rec. No. 3349269 in the Office of the Weld County Clerk and Recorder, being more particularly described as follows:

Lot B, Recorded Exemption No. 0807-4-35-RE-476, as shown on the plat thereof recorded at Reception No. 1847472 in the Office of the Weld County Clerk and Recorder, situated in the S 1/2 of the NE 1/4 and the N 1/2 of the SE 1/4 of Section 35, Township 6 North, Range 67 West of the 6th Principal Meridian

TOGETHER WITH

That parcel of land described as Parcel 1 and a portion of that parcel of land described as Parcel 2 in that Warranty Deed recorded at Rec. No. 3469857 in the Office of the Weld County Clerk and Recorder, being more particularly described as follows:

All of the NW 1/4 and that part of the SW 1/4 of Section 36, Township 6 North, Range 67 West of the 6th Principal Meridian, lying east of the West County Road and north of the center of the Cache la Poudre River

AND

The W 1/2 of the SW 1/4 of Section 25, Township 6 North, Range 67 West of the 6th Principal Meridian.

EXHIBIT B-1
Depiction of Easement Property and Temporary Construction Easement Area

[See Attached]

EXHIBIT B1

A permanent utility easement situated in the SW 1/4 of Section 25, the W 1/2 of Section 36, and the SE 1/4 of Section 35, Township 6 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, being more particularly described as follows:

Commencing at the W 1/4 corner of said Section 25 (from whence the SW corner of said section bears S0°05'59"W, a distance of 2638.60 feet);

Thence N89°56'59"E, coincident with the north line of the SW 1/4 of said Section 25, a distance of 50.00 feet to the **Point of Beginning**;

Thence continuing N89°56'59"E, coincident with said north line, a distance of 30.00 feet;

Thence S0°05'59"W, parallel with and 50.00 feet east of the easterly right-of-way of Weld County Rd. 23 (2020), a distance of 222.65 feet;

Thence S45°05'59"W, a distance of 28.29 feet;

Thence S0°05'59"W, parallel with and 30.00 feet east of said easterly right-of-way, a distance of 2395.90 feet to a point on the north line of the NW 1/4 of said Section 36;

Thence S0°08'36"E, parallel with and 30.00 feet east of said easterly right-of-way, a distance of 2615.48 feet;

Thence S44°26'31"E, parallel with and 30.00 feet northeast of the northeasterly right-of-way of Weld County Rd. 62.25 (2020), a distance of 101.57 feet;

Thence N44°50'14"E, a distance of 20.00 feet;

Thence S44°26'31"E, parallel with and 50.00 feet northeast of said northeasterly right-of-way, a distance of 418.49 feet;

Thence S71°22'26"E, a distance of 213.60 feet to the centerline of the Cache la Poudre River;

Thence S39°30'26"W, coincident with said centerline, a distance of 53.51 feet;

Thence N71°22'26"W, a distance of 206.49 feet to a point on said northeasterly right-of-way;

Thence N44°26'31"W, coincident with said northeasterly right-of-way, a distance of 177.35 feet;

Thence S34°35'21"W, a distance of 513.74 feet to the northerly bank of the Cache la Poudre River;

Thence N19°09'26"W, coincident with said northerly bank, a distance of 37.20 feet;

Thence N34°35'21"E, a distance of 497.55 feet to a point on said northeasterly right-of-way;

Thence N44°26'31"W, coincident with said northeasterly right-of-way, a distance of 336.08 feet;

Thence N0°08'36"W, coincident with said easterly right-of-way of Weld County Rd. 23, a distance of 2627.69 feet to a point on said north line of the NW 1/4 of said Section 36;

Thence N0°05'59"E, coincident with said easterly right-of-way, a distance of 2408.45 feet;

Thence N45°05'59"E, a distance of 28.29 feet;

Thence N0°05'59"E, parallel with and 30.00 feet east of said easterly right-of-way, a distance of 210.15 feet to the **Point of Beginning**.

The above described parcel contains a total of 208,169 sq. ft. (4.779 acres), more or less.

Bearings based on the west line of the SW 1/4 of Section 25, T6N, R67W, 6th P.M., being S0°05'59"W.

Illustration for Exhibit B1 attached and made a part hereof.

Eric W. Ansart
Colorado PLS# 38356
For and on behalf of the
City of Aurora, Colorado
13636 E. Ellsworth Ave.
Aurora, Colorado 80012

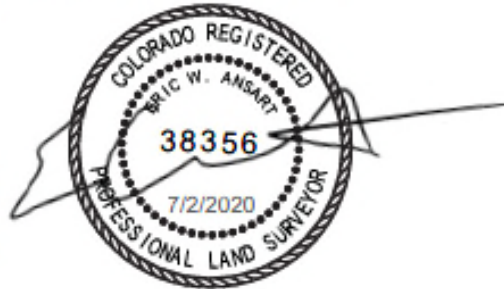
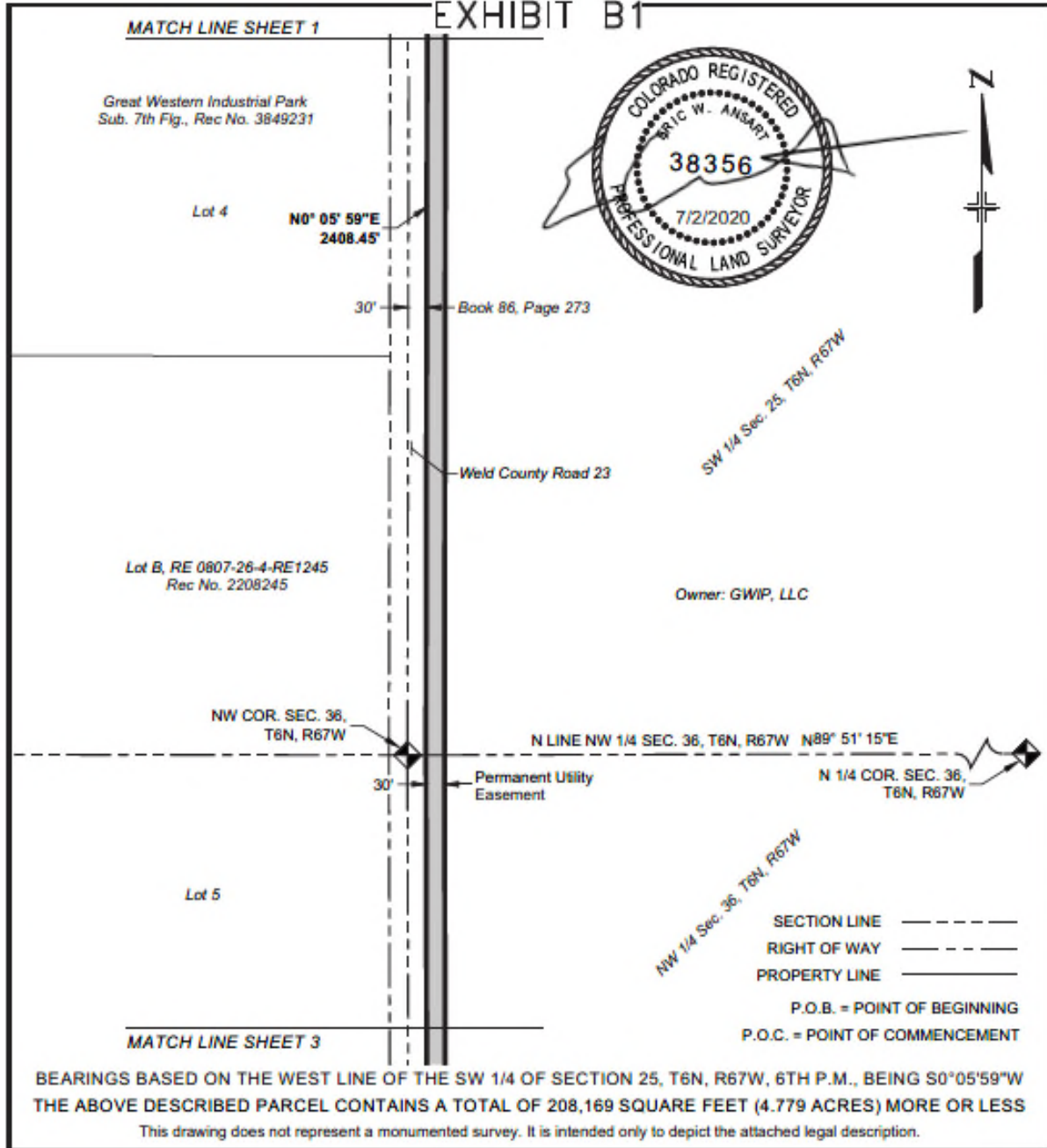


ILLUSTRATION FOR
EXHIBIT B1

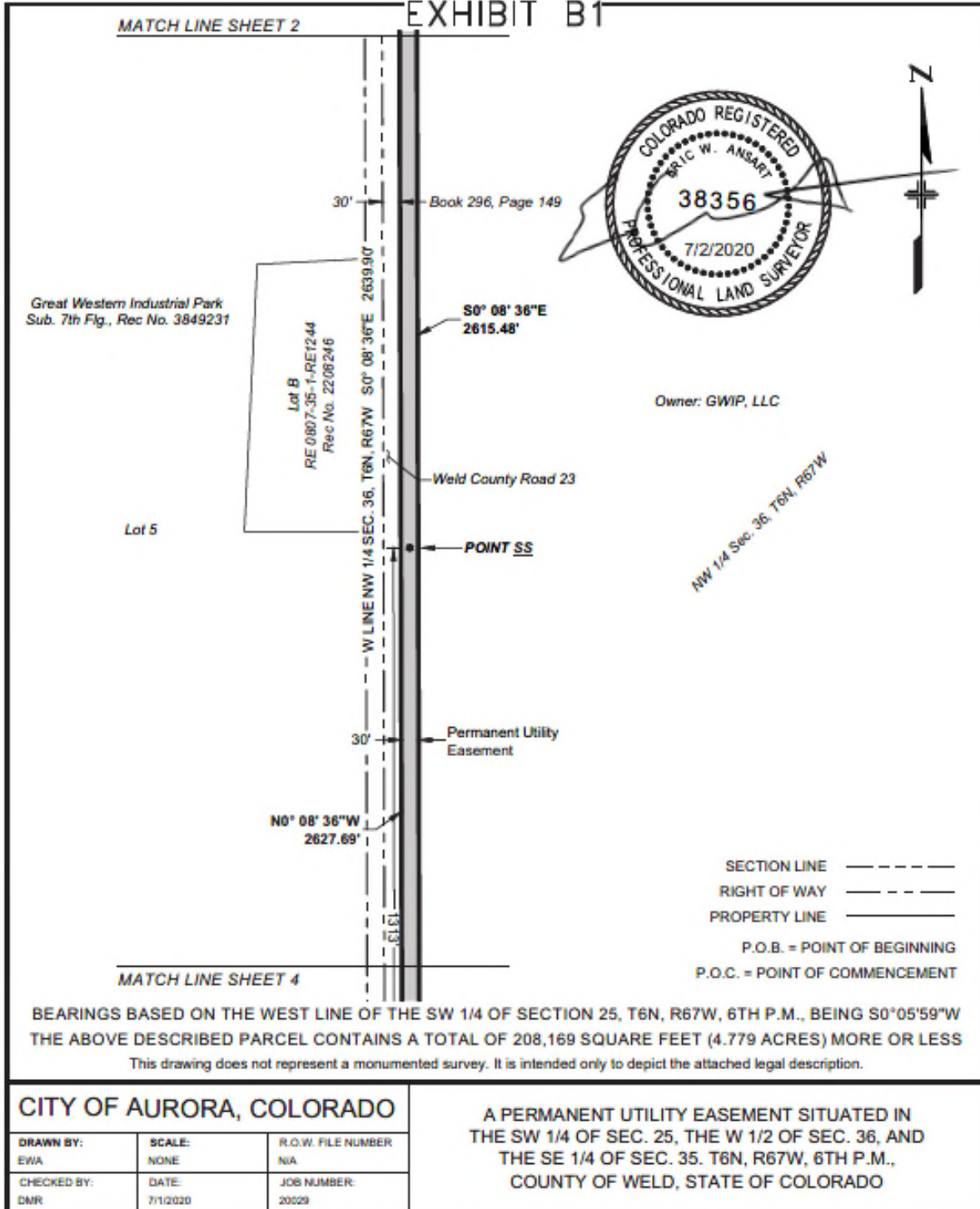


CITY OF AURORA, COLORADO			A PERMANENT UTILITY EASEMENT SITUATED IN THE SW 1/4 OF SEC. 25, THE W 1/2 OF SEC. 36, AND THE SE 1/4 OF SEC. 35, T6N, R67W, 6TH P.M., COUNTY OF WELD, STATE OF COLORADO
DRAWN BY: EWA	SCALE: NONE	R.O.W. FILE NUMBER N/A	
CHECKED BY: DMR	DATE: 7/1/2020	JOB NUMBER: 20029	

SHEET 2 OF 4

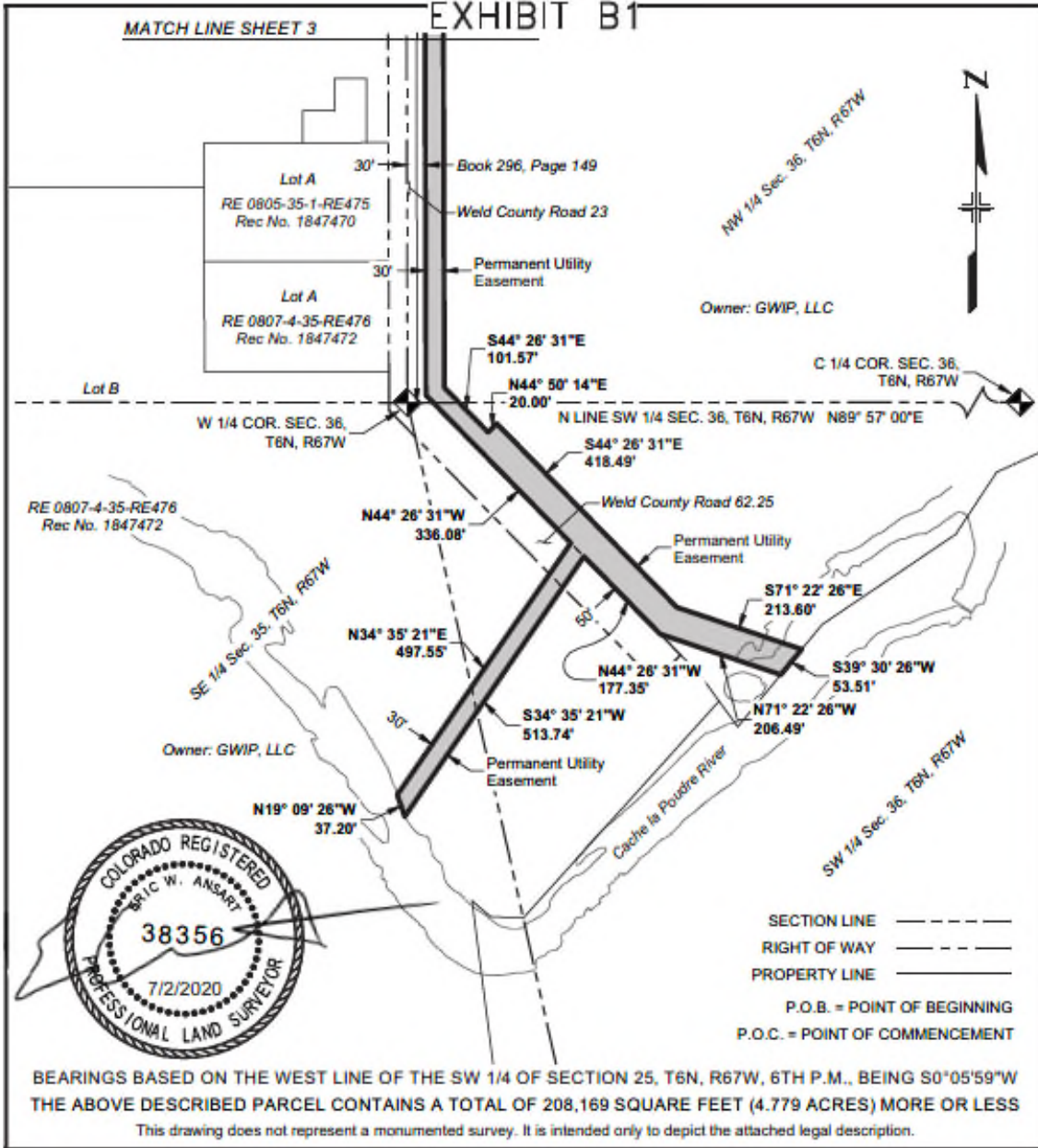
G-22

ILLUSTRATION FOR
EXHIBIT B1



SHEET 3 OF 4

ILLUSTRATION FOR
EXHIBIT B1



CITY OF AURORA, COLORADO			A PERMANENT UTILITY EASEMENT SITUATED IN THE SW 1/4 OF SEC. 25, THE W 1/2 OF SEC. 36, AND THE SE 1/4 OF SEC. 35, T6N, R67W, 6TH P.M., COUNTY OF WELD, STATE OF COLORADO
DRAWN BY: EWA	SCALE: NONE	R.O.W. FILE NUMBER N/A	
CHECKED BY: DMR	DATE: 7/1/2020	JOB NUMBER: 20029	
COLORADO REGISTERED ERIC W. ANSART 38356 7/2/2020 PROFESSIONAL LAND SURVEYOR			

SHEET 4 OF 4

EXHIBIT B-2

Legal Description of Easement Property and Temporary Construction Easement Area

[See Attached]

EXHIBIT B2

Two temporary construction easements situated in the SW 1/4 of Section 25, the W 1/2 of Section 36, and the SE 1/4 of Section 35, Township 6 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, being more particularly described as follows:

Parcel TE1:

Commencing at the W 1/4 corner of said Section 25 (from whence the SW corner of said section bears S0°05'59"W, a distance of 2638.60 feet);

Thence N89°56'59"E, coincident with the north line of the SW 1/4 of said Section 25, a distance of 80.00 feet to the **Point of Beginning**;

Thence continuing N89°56'59"E, coincident with said north line, a distance of 20.00 feet;

Thence S0°05'59"W, parallel with and 70.00 feet east of the easterly right-of-way of Weld County Rd. 23 (2020), a distance of 230.99 feet;

Thence S45°05'59"W, a distance of 28.29 feet;

Thence S0°05'59"W, parallel with and 50.00 feet east of said easterly right-of-way, a distance of 2387.53 feet to a point on the north line of the NW 1/4 of said Section 36;

Thence S0°08'36"E, parallel with and 50.00 feet east of said easterly right-of-way, a distance of 2607.34 feet;

Thence S44°26'31"E, parallel with and 50.00 feet northeast of the northeasterly right-of-way of Weld County Rd. 62.25 (2020), a distance of 73.17 feet;

Thence N44°50'14"E, a distance of 20.00 feet;

Thence S44°26'31"E, parallel with and 70.00 feet northeast of said northeasterly right-of-way, a distance of 433.95 feet;

Thence S71°22'26"E, a distance of 216.44 feet to the centerline of the Cache la Poudre River;

Thence S39°30'26"W, coincident with said centerline, a distance of 21.41 feet;

Thence N71°22'26"W, a distance of 213.60 feet;

Thence N44°26'31"W, parallel with and 50.00 feet northeast of said northeasterly right-of-way, a distance of 418.49 feet;

Thence S44°50'14"W, a distance of 20.00 feet;

Thence N44°26'31"W, parallel with and 30.00 feet northeast of said northeasterly right-of-way, a distance of 101.57 feet;

Thence N0°08'36"W, parallel with and 30.00 feet east of said easterly right-of-way of Weld County Rd. 23, a distance of 2615.48 feet to a point on said north line of the NW 1/4 of said Section 36;

Thence N0°05'59"E, parallel with and 30.00 feet east of said easterly right-of-way, a distance of 2395.90 feet;

Thence N45°05'59"E, a distance of 28.29 feet;

Thence N0°05'59"E, parallel with and 50.00 feet east of said easterly right-of-way, a distance of 222.65 feet to the **Point of Beginning**.

Parcel TE2:

Commencing at the W 1/4 corner of said Section 36 (from whence the NW corner of said section bears N0°08'36"W, a distance of 2639.90 feet);

Thence S49°40'09"E, a distance of 329.29 feet to a point on the northeasterly right-of-way of Weld County Rd. 62.25 (2020), said point being the **Point of Beginning**;

Thence S44°26'31"E, coincident with said right-of-way, a distance of 20.37 feet;

Thence S34°35'21"W, a distance of 497.55 feet to the northerly bank of the Cache la Poudre River;

Thence N20°39'08"W, coincident with said northerly bank, a distance of 24.34 feet;

Thence N34°35'21"E, a distance of 487.55 feet to the **Point of Beginning**.

The above described parcels contain a total of 129,988 sq. ft. (2.984 acres), more or less.

Bearings based on the west line of the SW 1/4 of Section 25, T6N, R67W, 6th P.M., being S0°05'59"W.

Illustration for Exhibit B2 attached and made a part hereof.

Eric W. Ansart
Colorado PLS# 38356
For and on behalf of the
City of Aurora, Colorado
13636 E. Ellsworth Ave.
Aurora, Colorado 80012

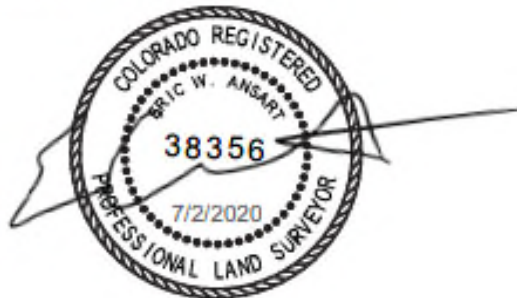
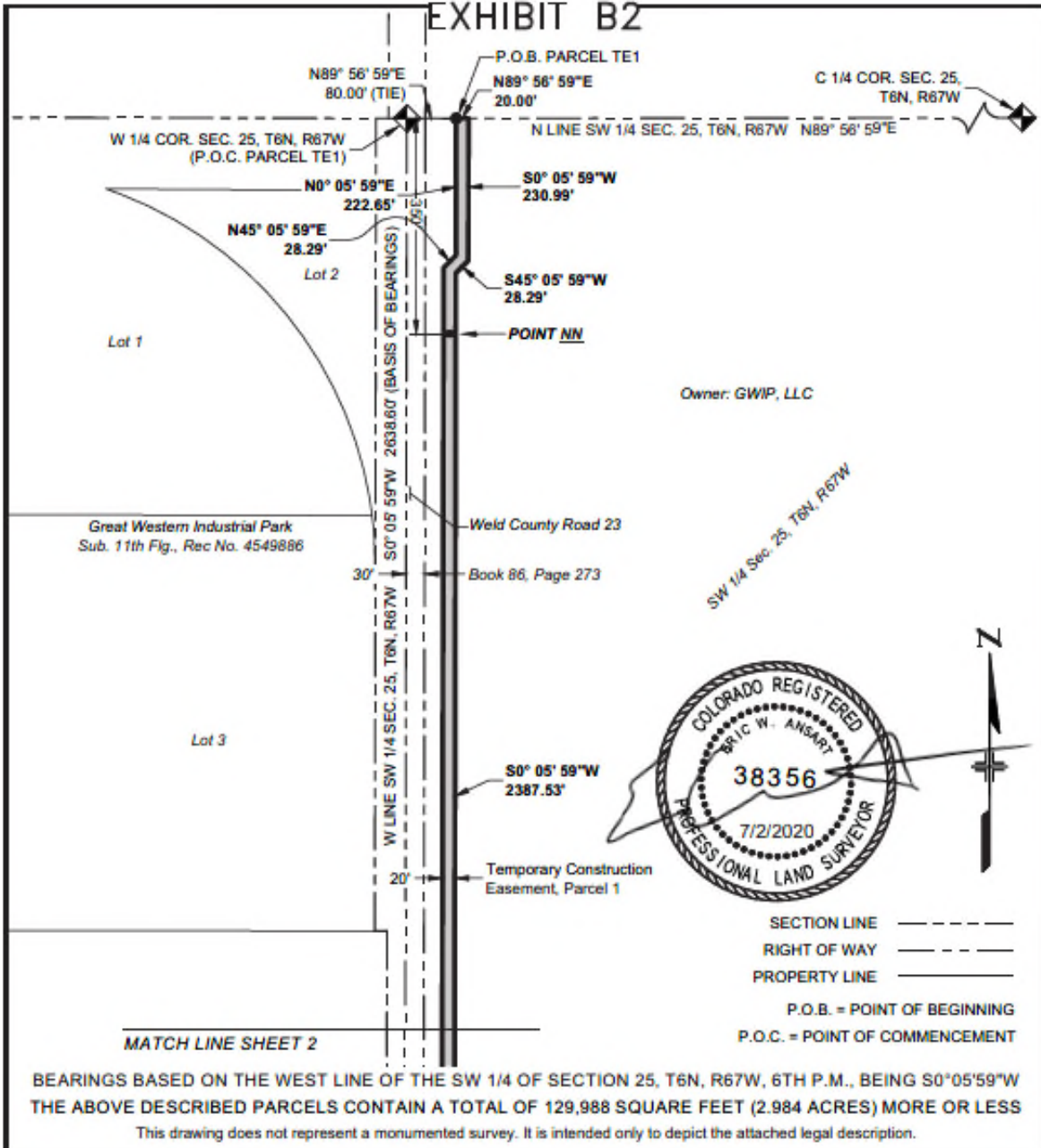


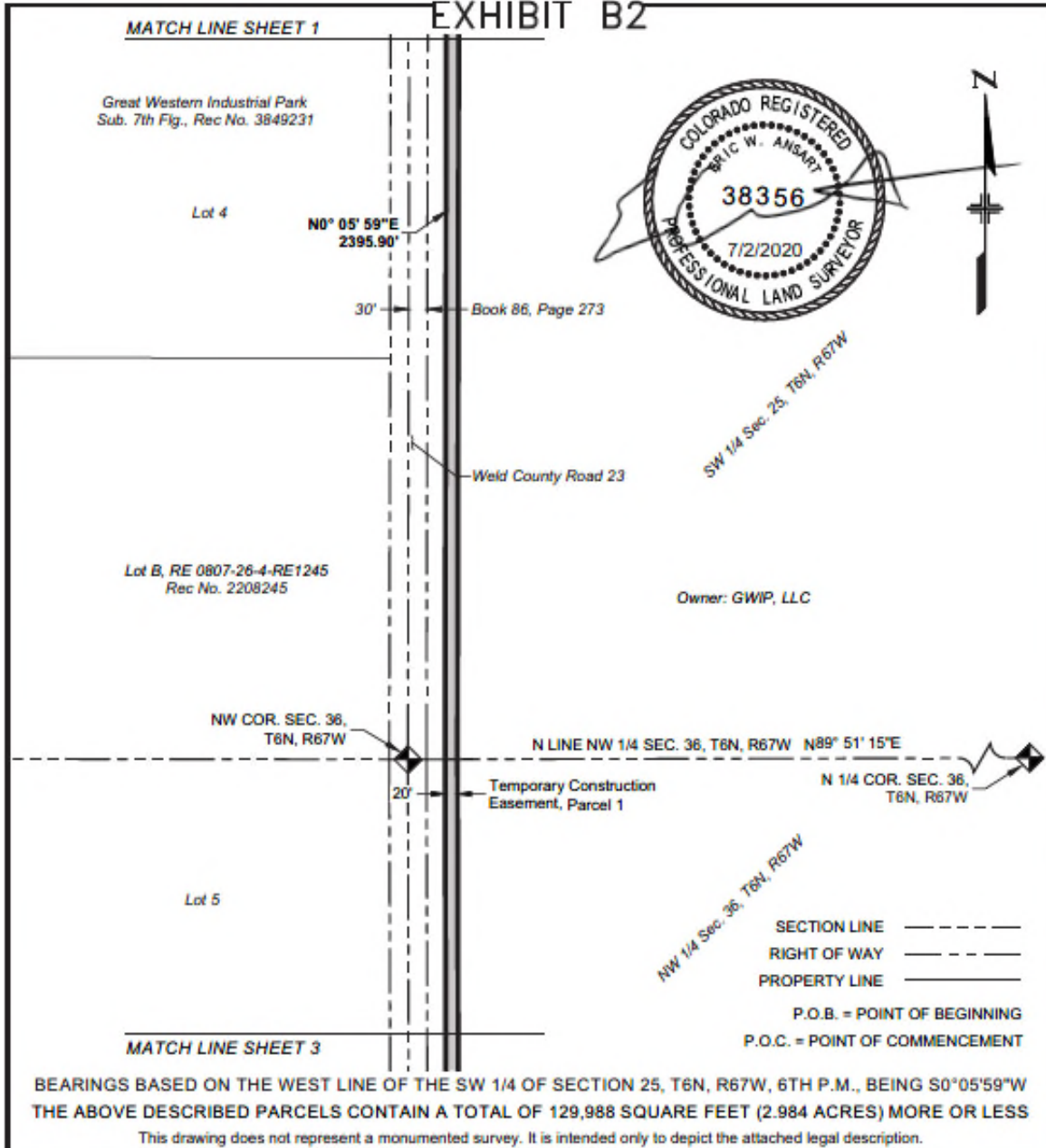
ILLUSTRATION FOR
EXHIBIT B2



CITY OF AURORA, COLORADO			TWO TEMPORARY CONSTRUCTION EASEMENTS SITUATED IN THE SW 1/4 OF SEC. 25, THE W 1/2 OF SEC. 36, AND THE SE 1/4 OF SEC. 35. T6N, R67W, 6TH P.M., COUNTY OF WELD, STATE OF COLORADO
DRAWN BY: EWA	SCALE: NONE	R.O.W. FILE NUMBER N/A	
CHECKED BY: DMR	DATE: 7/1/2020	JOB NUMBER: 20529	

SHEET 1 OF 4

ILLUSTRATION FOR
EXHIBIT B2

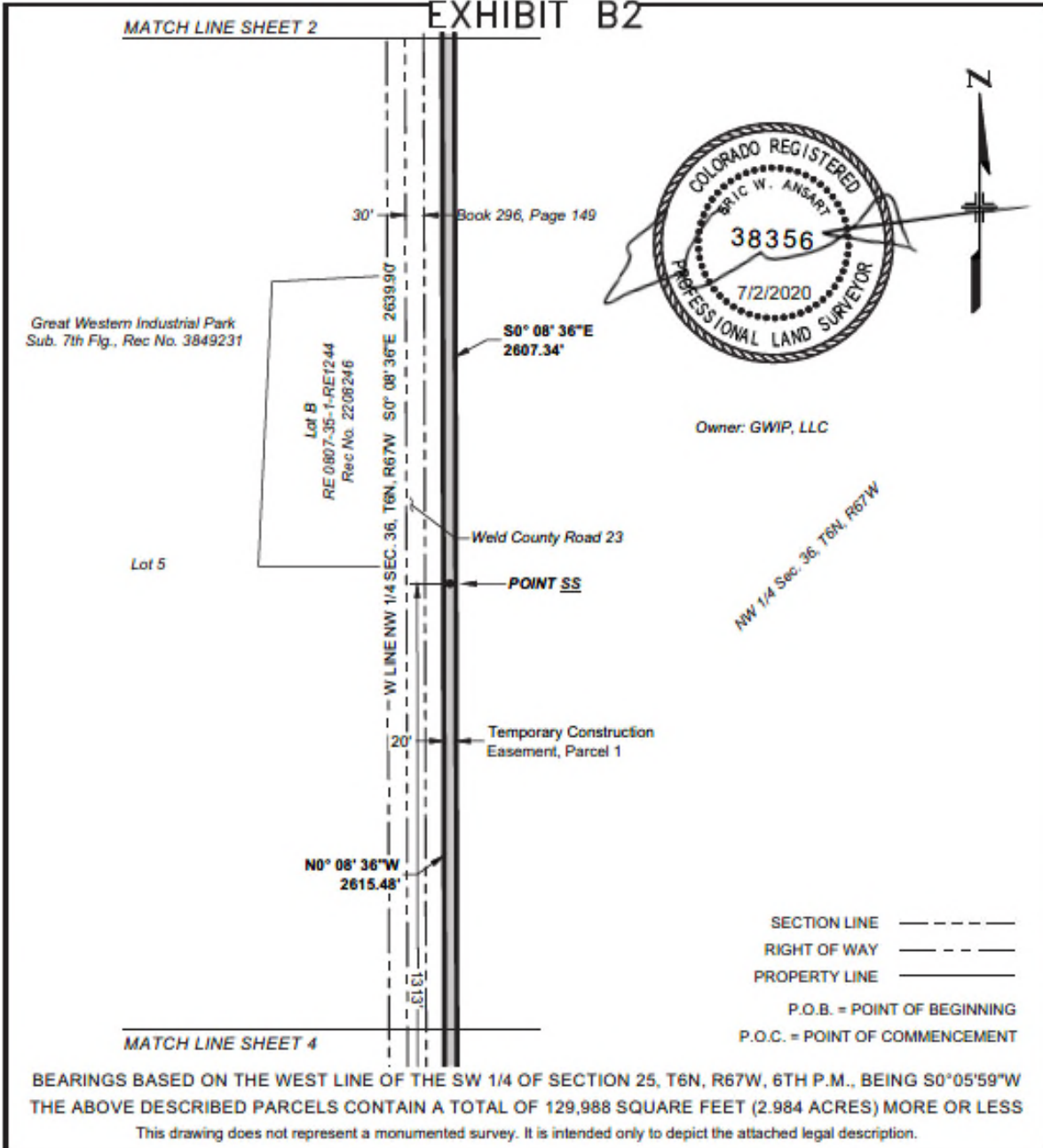


CITY OF AURORA, COLORADO

DRAWN BY: EWA	SCALE: NONE	R.O.W. FILE NUMBER: N/A
CHECKED BY: DMR	DATE: 7/1/2020	JOB NUMBER: 20029

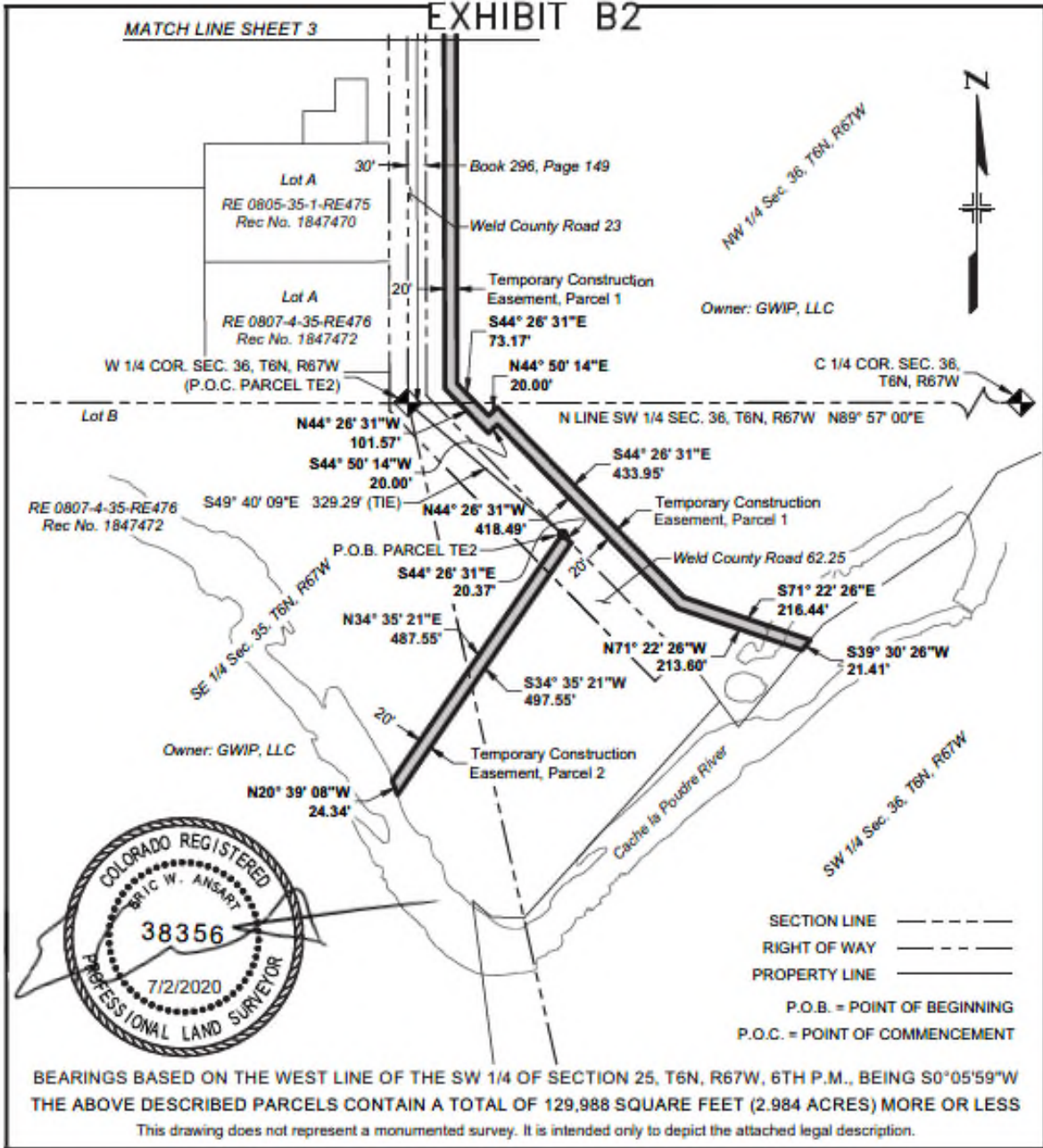
**TWO TEMPORARY CONSTRUCTION EASEMENTS
SITUATED IN THE SW 1/4 OF SEC. 25, THE W 1/2 OF
SEC. 36, AND THE SE 1/4 OF SEC. 35, T6N, R67W,
6TH P.M., COUNTY OF WELD, STATE OF COLORADO**

ILLUSTRATION FOR
EXHIBIT B2



CITY OF AURORA, COLORADO			TWO TEMPORARY CONSTRUCTION EASEMENTS SITUATED IN THE SW 1/4 OF SEC. 25, THE W 1/2 OF SEC. 36, AND THE SE 1/4 OF SEC. 35, T6N, R67W, 6TH P.M., COUNTY OF WELD, STATE OF COLORADO
DRAWN BY: EWA	SCALE: NONE	R.O.W. FILE NUMBER: N/A	
CHECKED BY: DMR	DATE: 7/1/2020	JOB NUMBER: 20029	

ILLUSTRATION FOR
EXHIBIT B2



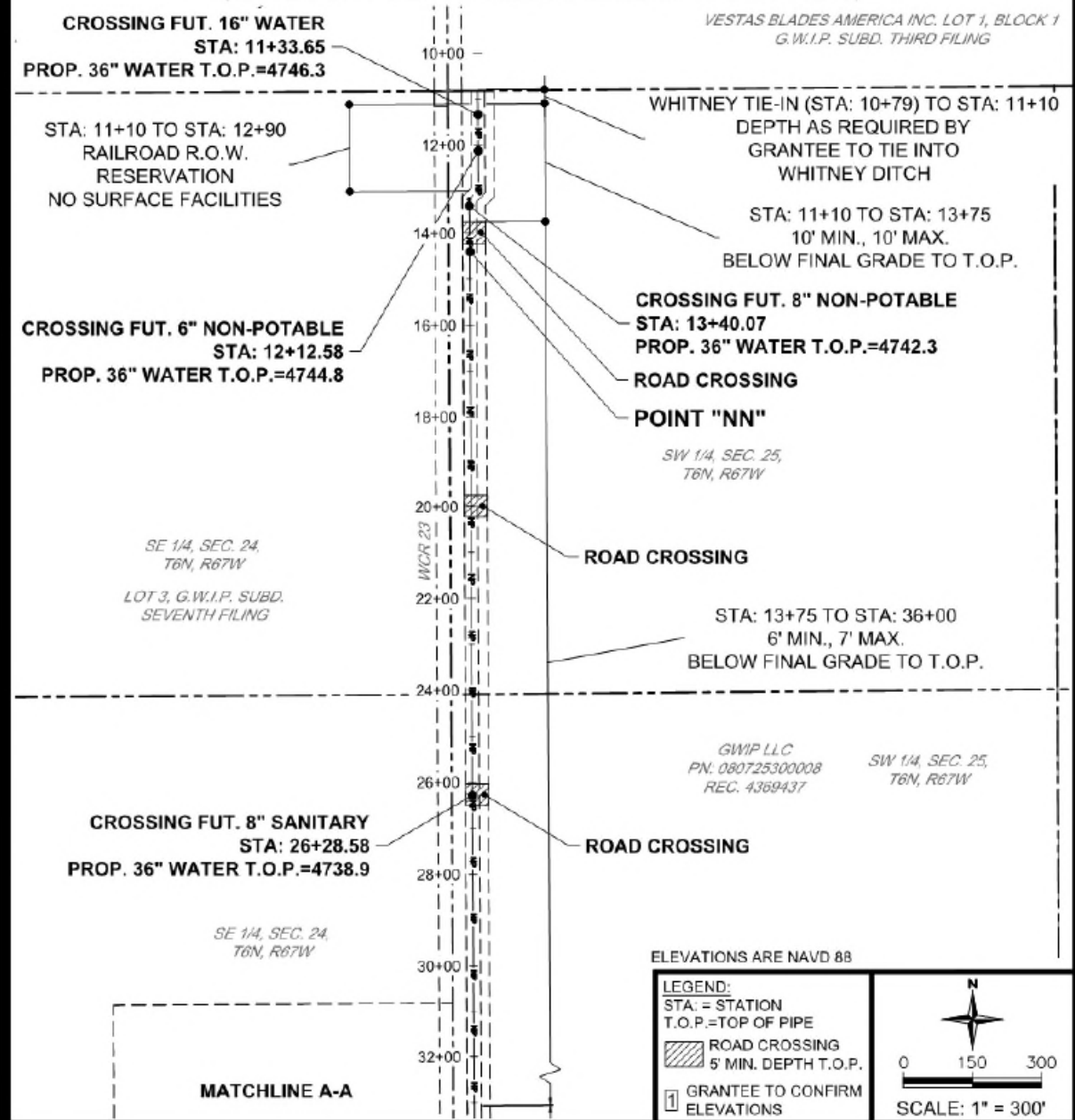
CITY OF AURORA, COLORADO			TWO TEMPORARY CONSTRUCTION EASEMENTS SITUATED IN THE SW 1/4 OF SEC. 25, THE W 1/2 OF SEC. 36, AND THE SE 1/4 OF SEC. 35, T6N, R67W, 6TH P.M., COUNTY OF WELD, STATE OF COLORADO
DRAWN BY: EWA	SCALE: NONE	R.O.W. FILE NUMBER: N/A	
CHECKED BY: DMR	DATE: 7/1/2020	JOB NUMBER: 20029	
SHEET 4 OF 4			

EXHIBIT C-1
Easement Depth Requirement – Plan View

[See Attached]

EXHIBIT "C-1"

(EASEMENT DEPTH REQUIREMENT - PLAN VIEW)



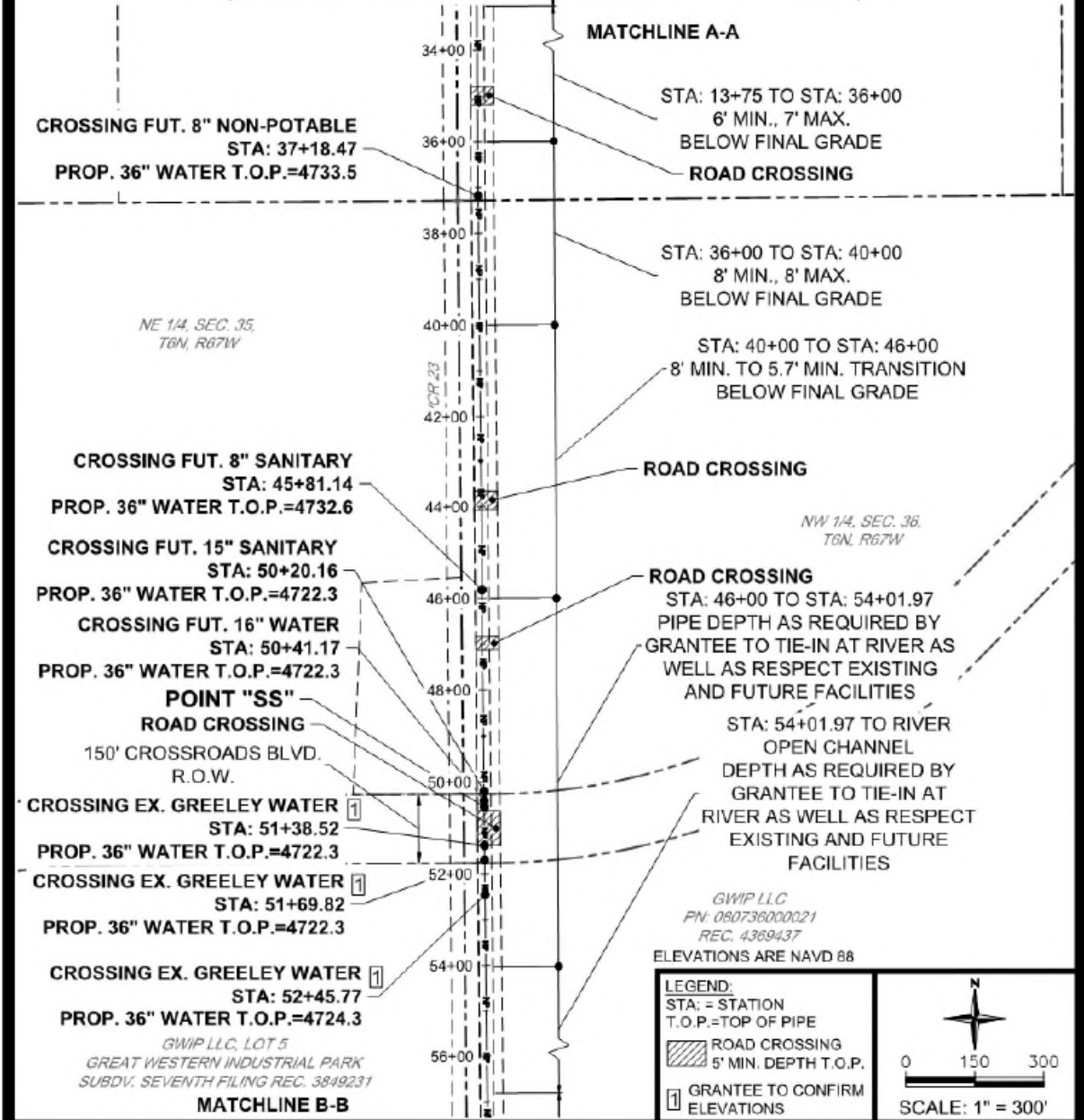
GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
PLAN VIEW**

DATE	2020.07.01
PROJ. NO.	16003.14
SHEET	1 of 3

EXHIBIT "C-1"

(EASEMENT DEPTH REQUIREMENT - PLAN VIEW)



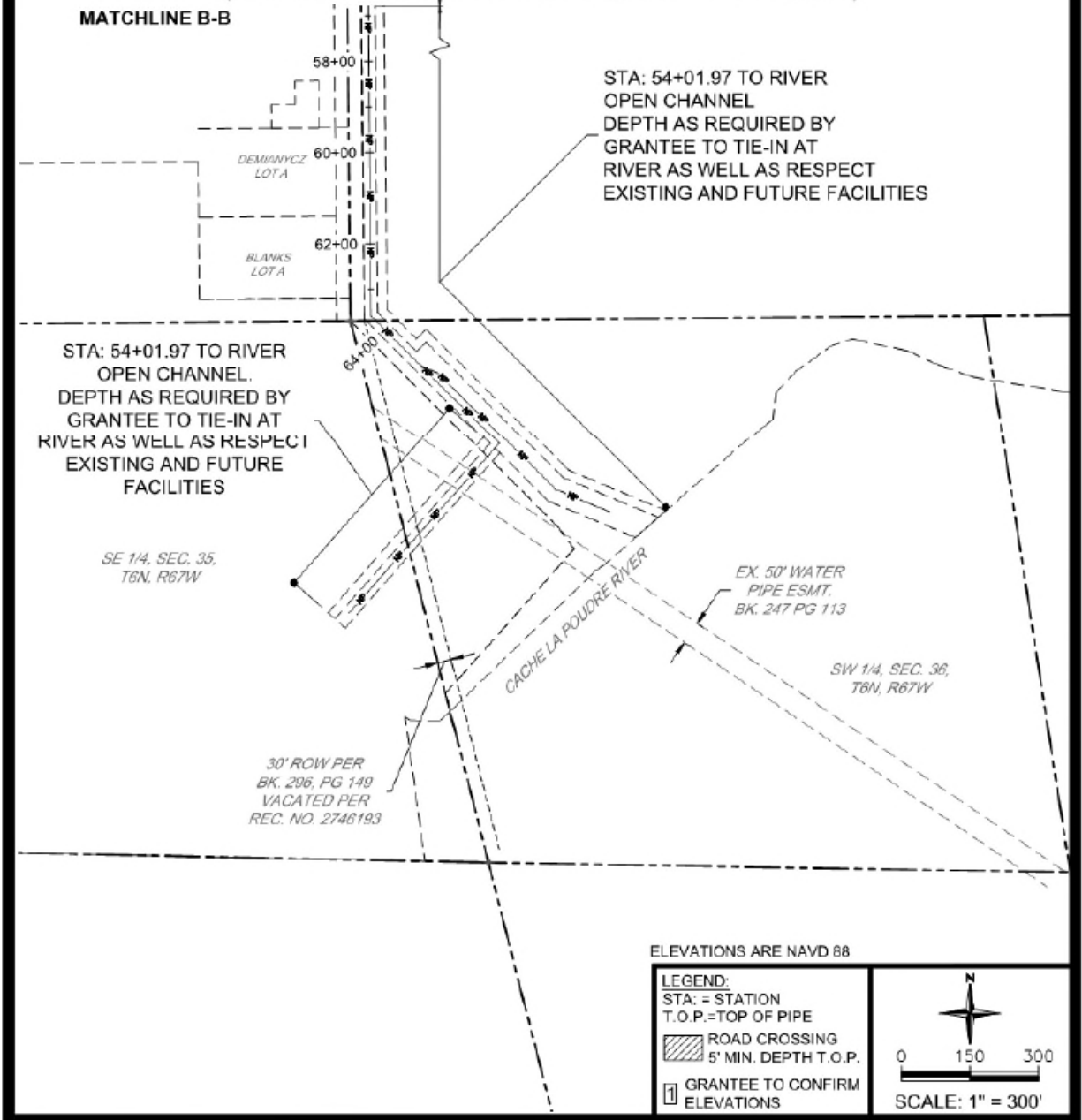
GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
PLAN VIEW**

DATE	2020.07.01
PROJ. NO.	16003.14
SHEET	2 of 3

EXHIBIT "C-1"

(EASEMENT DEPTH REQUIREMENT - PLAN VIEW)



GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
PLAN VIEW**

DATE 2020.07.01

PROJ. NO. 16003.14

SHEET

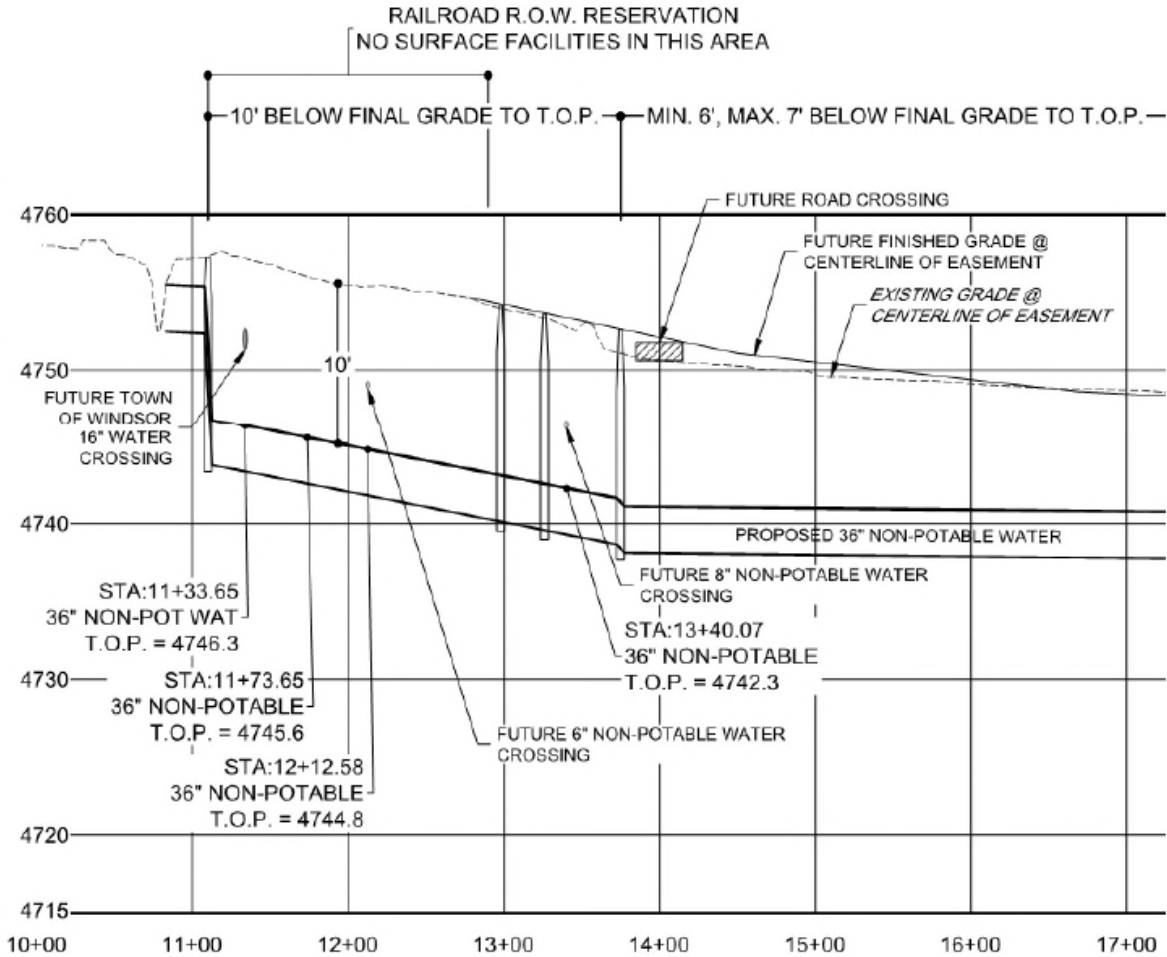
3 of 3

EXHIBIT C-2
Easement Depth Requirement – Profile

[See Attached]

EXHIBIT "C-2"

(EASEMENT DEPTH REQUIREMENT - PROFILE)



ELEVATIONS ARE NAVD 88

LEGEND:
 STA: = STATION
 T.O.P. = TOP OF PIPE
 ROAD CROSSING
 5' MIN. DEPTH T.O.P.
 GRANTEE TO CONFIRM
 ELEVATIONS

0 50 100

HORIZ. SCALE: 1" = 100'
 VERT. SCALE: 1" = 10'

Redland
 WHERE GREAT PLACES BEGIN
723 300 6700 Office
 1500 West Central Court
 Littleton, Colorado 80120
 REDLAND.COM

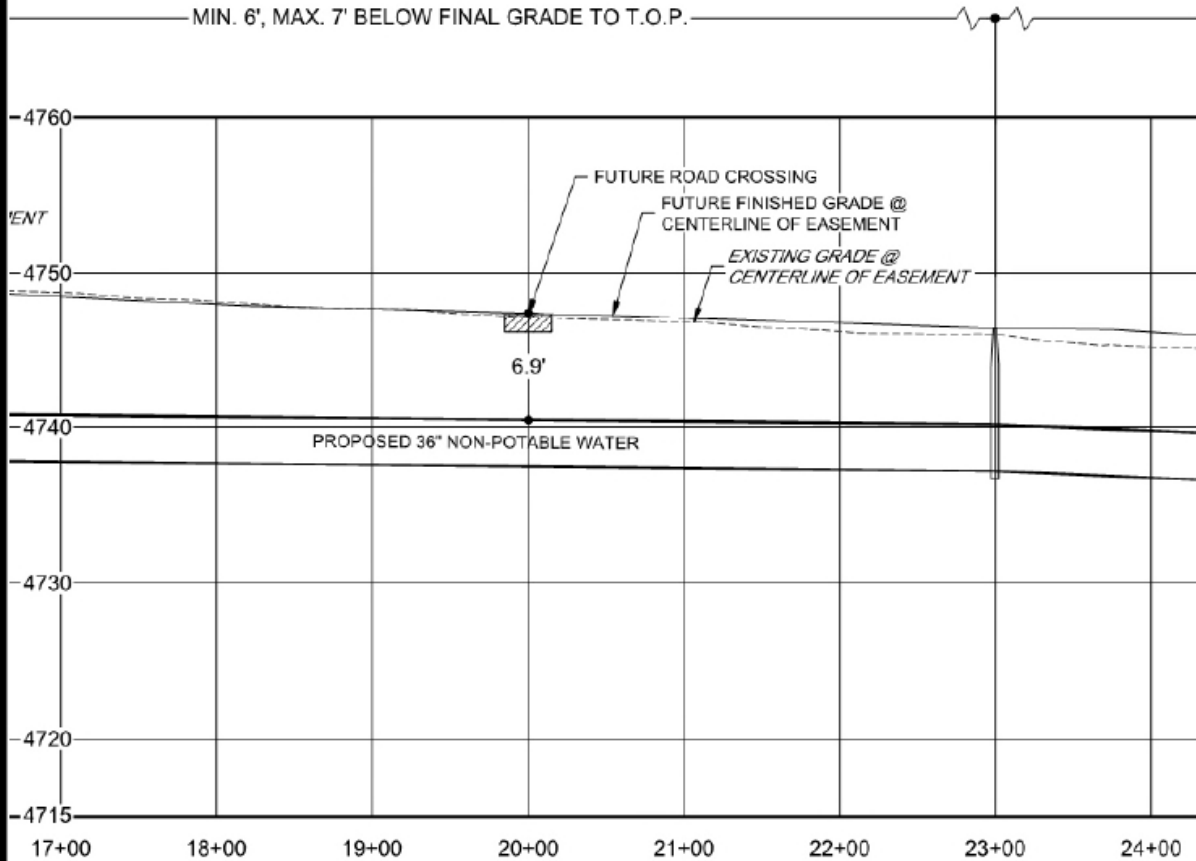
GWIP, LLC

EASEMENT DEPTH REQUIREMENT
 PROFILE

DATE	2020.07.01
PROJ. NO.	18003.14
SHEET	1 of 9

EXHIBIT "C-2"

(EASEMENT DEPTH REQUIREMENT - PROFILE)



ELEVATIONS ARE NAVD 88

LEGEND:
 STA. = STATION
 T.O.P. = TOP OF PIPE
 ROAD CROSSING
 5' MIN. DEPTH T.O.P.
 GRANTEE TO CONFIRM
 ELEVATIONS

0 50 100

HORIZ. SCALE: 1" = 100'
 VERT. SCALE: 1" = 10'



GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
 PROFILE**

DATE 2020.07.01

PROJ. NO. 16003.14

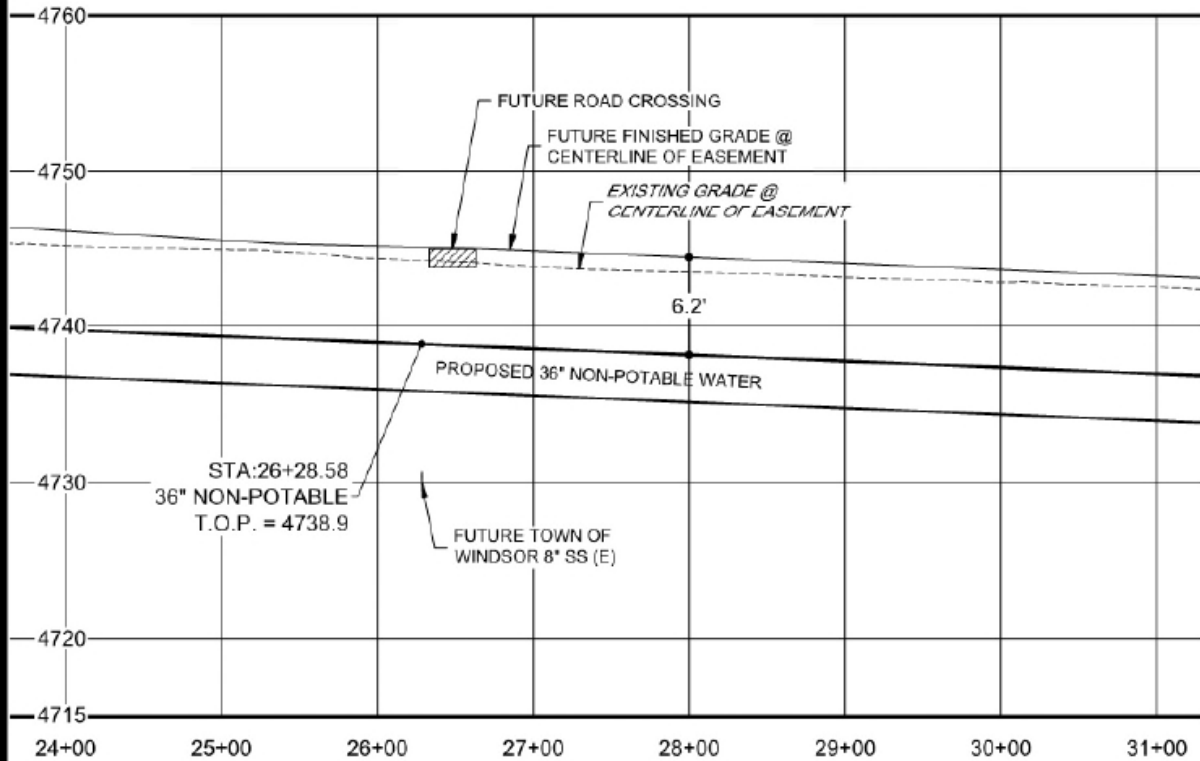
SHEET

2 of 9

EXHIBIT "C-2"

(EASEMENT DEPTH REQUIREMENT - PROFILE)

MIN. 6', MAX. 7' BELOW FINAL GRADE TO T.O.P.



ELEVATIONS ARE NAVD 88

LEGEND:
 STA. = STATION
 T.O.P. = TOP OF PIPE
 ROAD CROSSING
 5' MIN. DEPTH T.O.P.
 GRANTEE TO CONFIRM
 ELEVATIONS

0 50 100

HORIZ. SCALE: 1" = 100'
 VERT. SCALE: 1" = 10'



GWIP, LLC

EASEMENT DEPTH REQUIREMENT PROFILE

DATE 2020.07.01

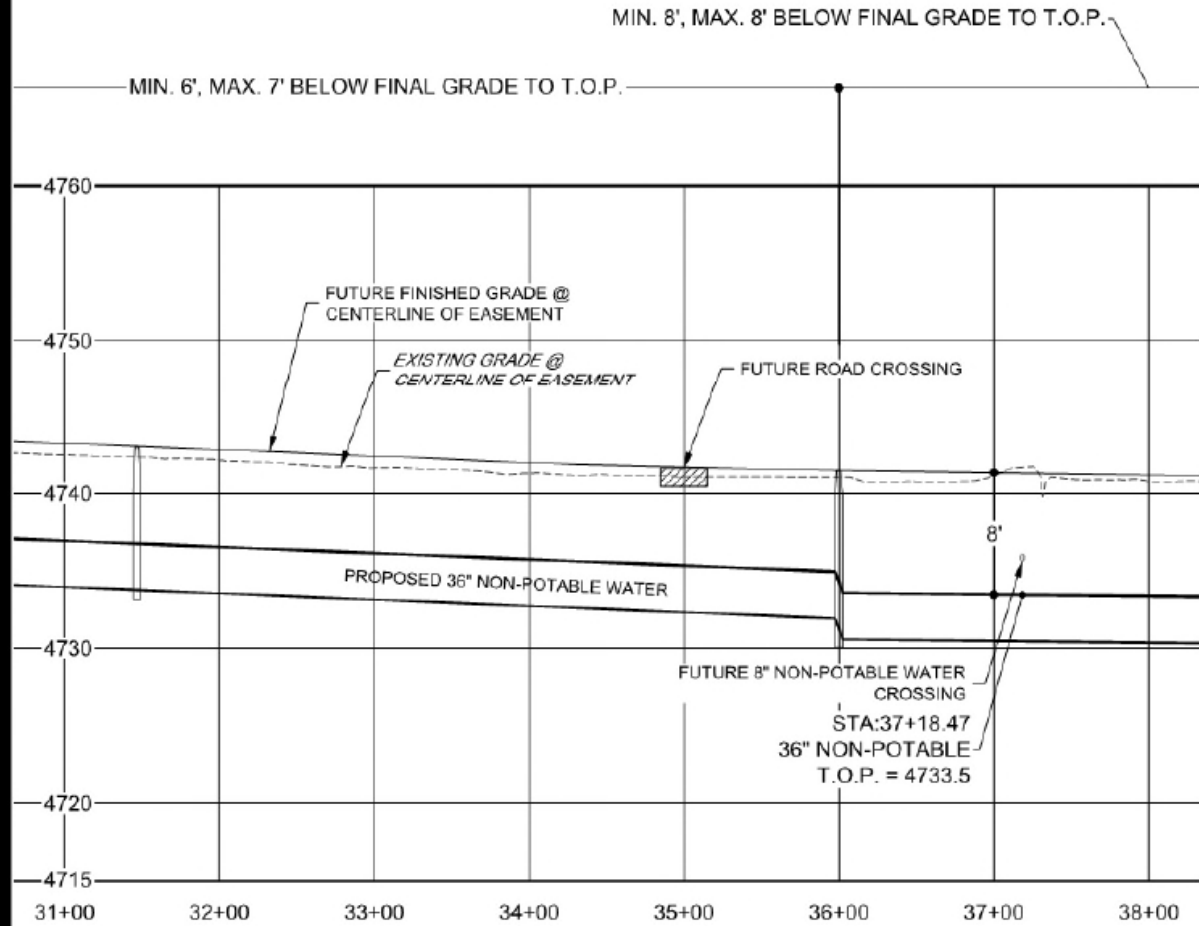
PROJ. NO. 16003.14

SHEET

3 of 9

EXHIBIT "C-2"

(EASEMENT DEPTH REQUIREMENT - PROFILE)



ELEVATIONS ARE NAVD 88

LEGEND:
 STA. = STATION
 T.O.P. = TOP OF PIPE
 ROAD CROSSING
 5' MIN. DEPTH T.O.P.
 GRANTEE TO CONFIRM ELEVATIONS

0 50 100
 HORIZ. SCALE: 1" = 100'
 VERT. SCALE: 1" = 10'



GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
 PROFILE**

DATE 2020.07.01

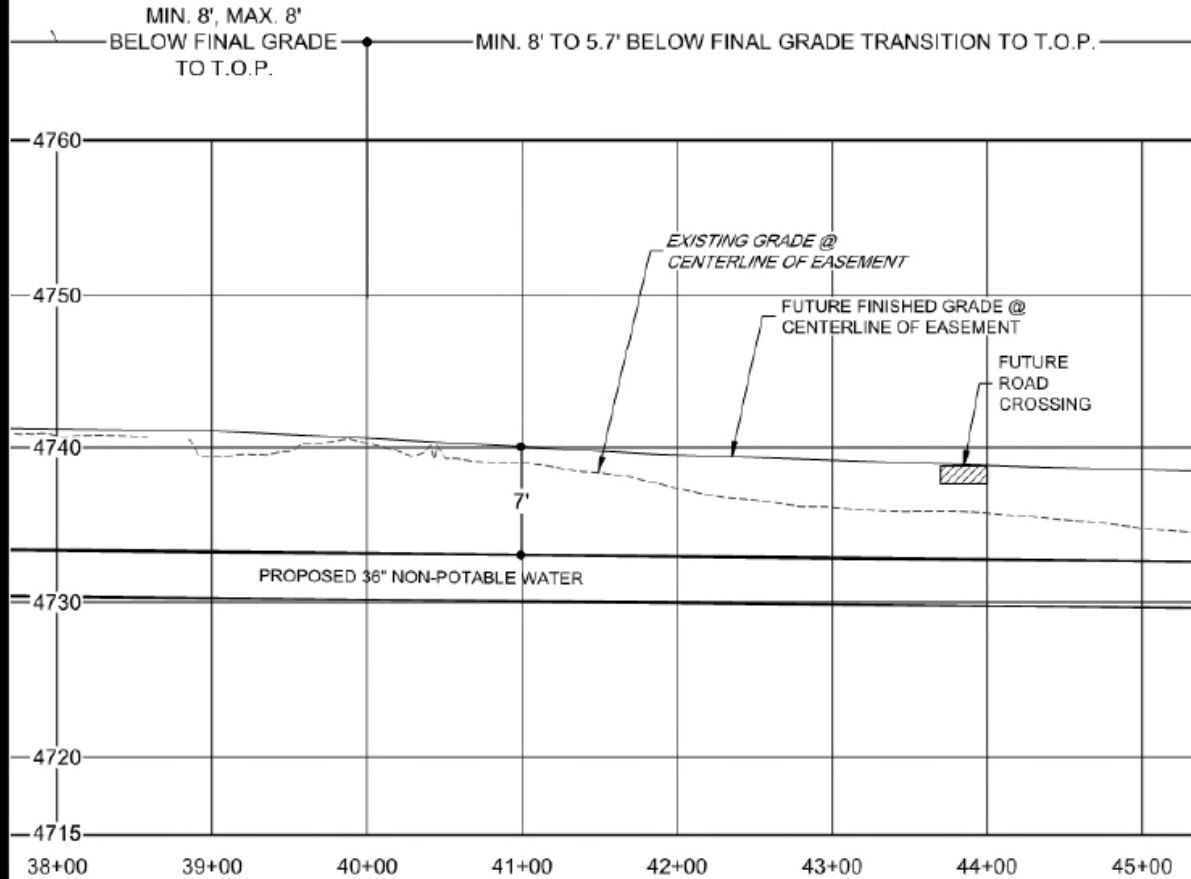
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SHEET

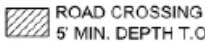

4 of 9

EXHIBIT "C-2"

(EASEMENT DEPTH REQUIREMENT - PROFILE)



ELEVATIONS ARE NAVD 88

LEGEND:
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 T.O.P. = TOP OF PIPE
 ROAD CROSSING
 5' MIN. DEPTH T.O.P.
 GRANTEE TO CONFIRM ELEVATIONS

0 50 100
 HORIZ. SCALE: 1" = 100'
 VERT. SCALE: 1" = 10'



GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
 PROFILE**

DATE 2020.07.01

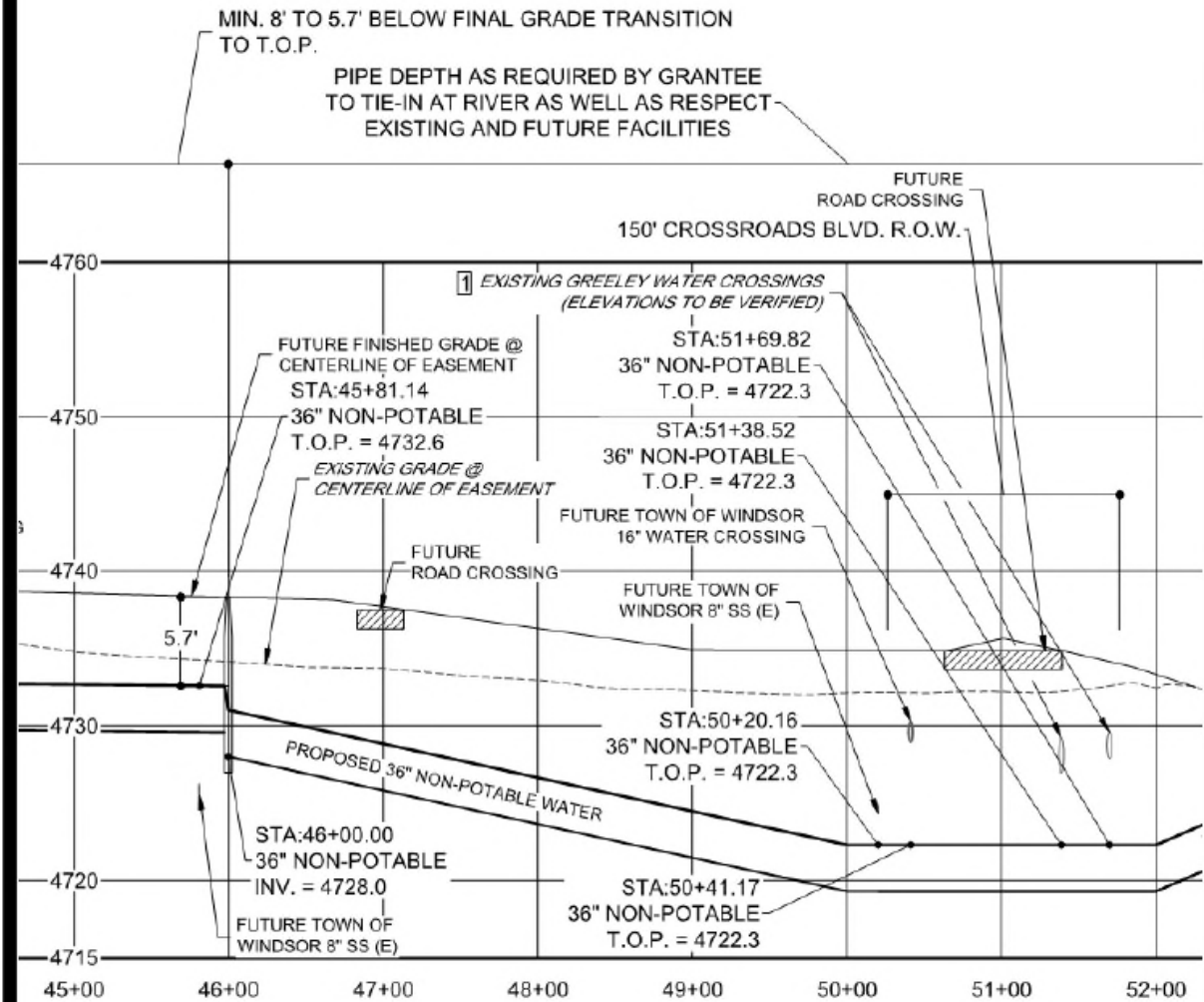
PROJ. NO. 16003.14

SHEET

5 of 9

EXHIBIT "C-2"

(EASEMENT DEPTH REQUIREMENT - PROFILE)



ELEVATIONS ARE NAVD 88

LEGEND:	
STA. = STATION	
T.O.P. = TOP OF PIPE	
ROAD CROSSING 5' MIN. DEPTH T.O.P.	
GRANTEE TO CONFIRM ELEVATIONS	

HORIZ. SCALE: 1" = 100'
VERT. SCALE: 1" = 10'



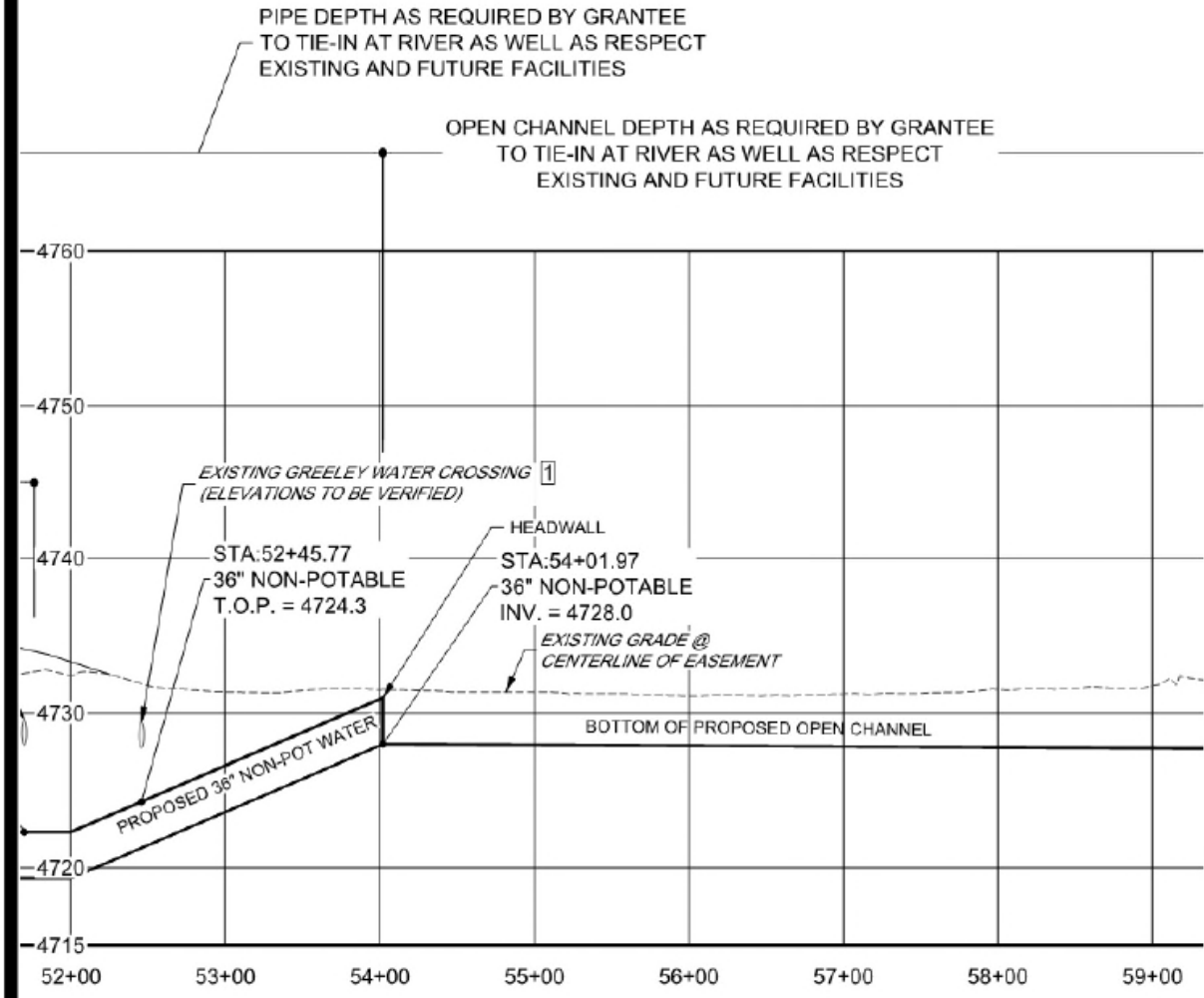
GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
PROFILE**

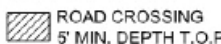

DATE	2020.07.01
PROJ. NO.	16003.14
SHEET	6 of 9

EXHIBIT "C-2"

(EASEMENT DEPTH REQUIREMENT - PROFILE)



ELEVATIONS ARE NAVD 88

LEGEND:
 STA. = STATION
 T.O.P. = TOP OF PIPE
 ROAD CROSSING
 5' MIN. DEPTH T.O.P.
 GRANTEE TO CONFIRM ELEVATIONS

0 50 100
 HORIZ. SCALE: 1" = 100'
 VERT. SCALE: 1" = 10'



GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
PROFILE**

DATE 2020.07.01

PROJ. NO. 16003.14

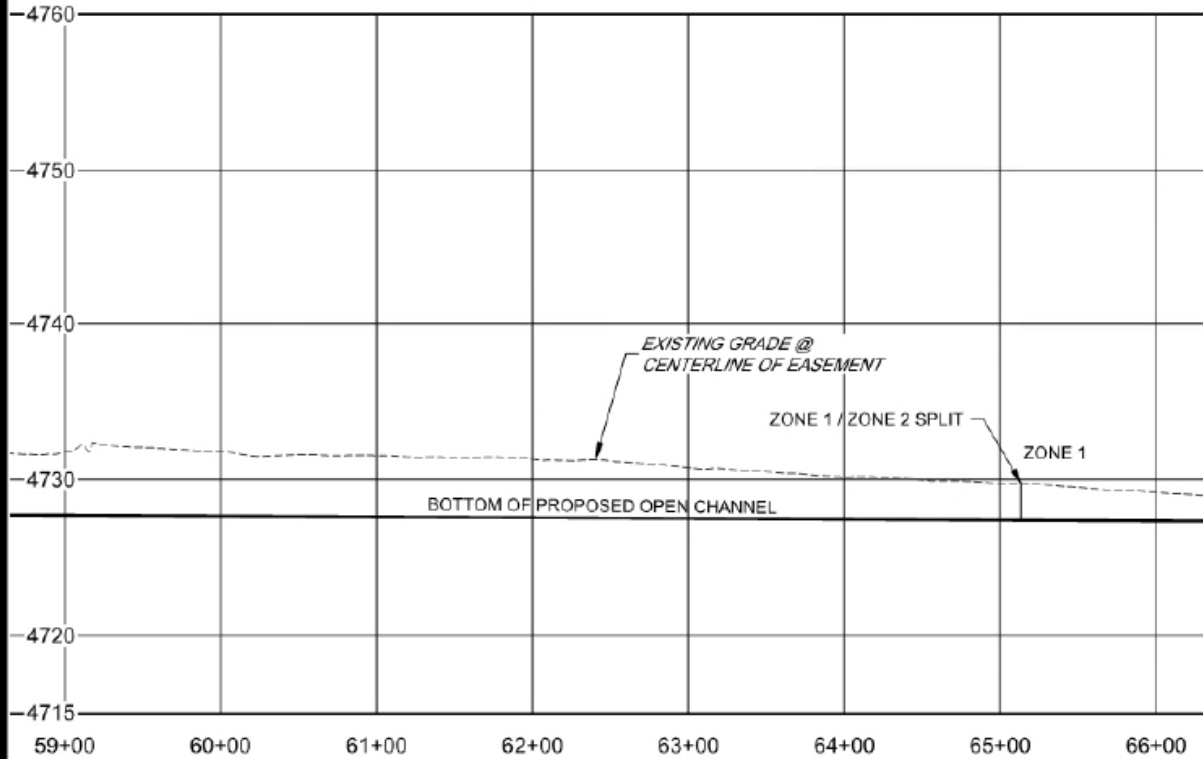
SHEET

7 of 9

EXHIBIT "C-2"

(EASEMENT DEPTH REQUIREMENT - PROFILE)

OPEN CHANNEL DEPTH AS REQUIRED BY GRANTEE
TO TIE-IN AT RIVER AS WELL AS RESPECT EXISTING AND FUTURE FACILITIES



ELEVATIONS ARE NAVD 88

LEGEND:
 STA. = STATION
 T.O.P. = TOP OF PIPE
 ROAD CROSSING
 5' MIN. DEPTH T.O.P.
 GRANTEE TO CONFIRM
 ELEVATIONS

0 50 100
 HORIZ. SCALE: 1" = 100'
 VERT. SCALE: 1" = 10'



GWIP, LLC

EASEMENT DEPTH REQUIREMENT PROFILE

DATE 2020.07.01

PROJ. NO. 16003.14

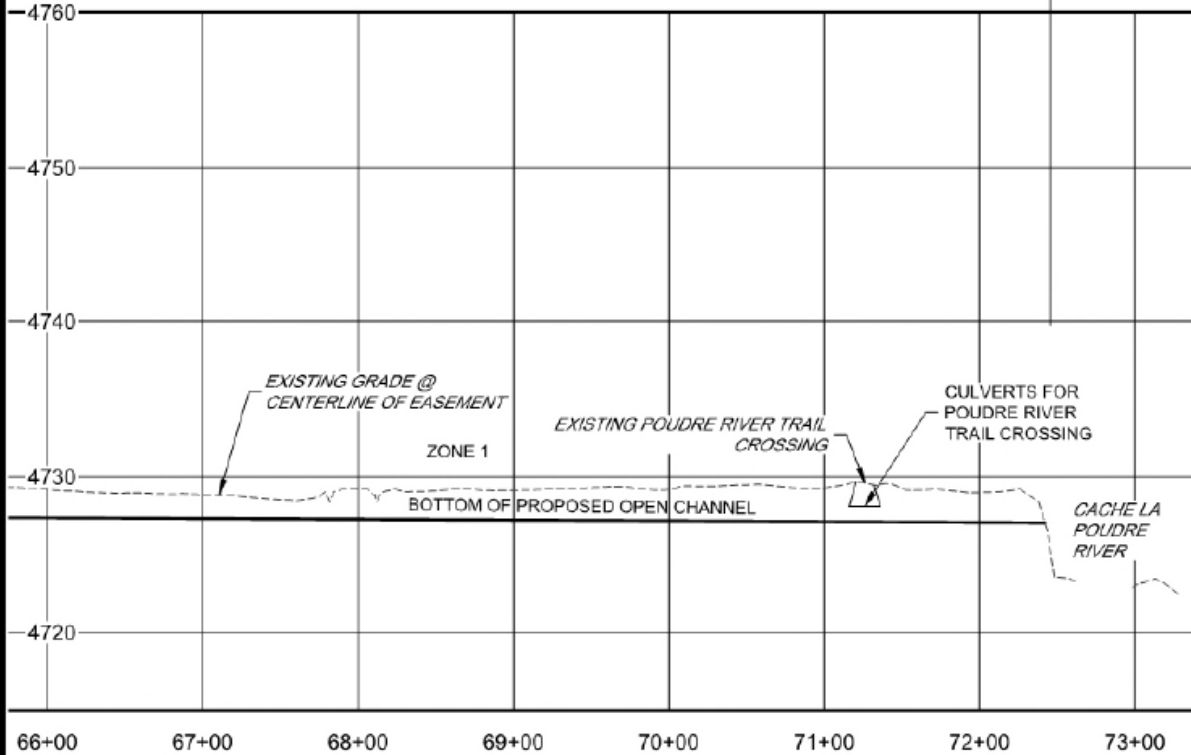
SHEET

8 of 9

EXHIBIT "C-2"

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OPEN CHANNEL DEPTH AS REQUIRED BY GRANTEE
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GWIP, LLC

**EASEMENT DEPTH REQUIREMENT
PROFILE**

DATE 2020.07.01
 PROJ. NO. 16003.14
 SHEET
9 of 9

Exhibit – H
to
Contract for Purchase of Irrigation Company Stock

Form of Limited Guaranty of Rescission Remedies

**Limited Guaranty of BCI Waterco, LLC’s
Payment Obligations Under Recession Remedies**

This Limited Guaranty of BCI Waterco, LLC’s Payment Obligations Under Recession Remedies (this “**Agreement**”) is by BREG INVESTMENT HOLDINGS 1, LLC a Colorado Limited Liability Company whose principal place of business is located at 252 Clayton Street, 4th Floor, Denver, CO 80206 (“**BREG**”) to and for the benefit of the CITY OF AURORA, Colorado, a Colorado home rule municipal corporation of the counties of Adams, Arapahoe, and Douglas acting by and through its Utility Enterprise whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012-1555 (“**Buyer**”), to be effective as of the this ____ day of ____, 2020 (“**Effective Date**”).

Recitals and Representations

WHEREAS, BCI Waterco, LLC, a Colorado Limited Liability Company (“**Seller**”) and Buyer have entered into that certain Contract for Purchase of Water Rights (“**Contract**”) pursuant to which Seller has agreed to sell to Buyer unencumbered marketable title to:

- (a) One hundred and eighteen (118) shares of stock in The Whitney Irrigation Company (the “**Ditch Company**”), as represented by Share Certificate Number 455; and
- (b) One additional share of the Ditch Company stock as represented by Share Certificate Number 446, which is nominally held in the name of an employee of an affiliate of Seller.

WHEREAS, pursuant to the Contract, Seller is obligated to cause Share Certificate Nos. 455 and 446 (collectively, the “**Subject Stock**”) to be timely and effectively transferred to Buyer free and clear of any and all encumbrances and adverse claims of title.

WHEREAS, if all or a portion of the Subject Stock is not timely and effectively transferred to Buyer by the Ditch Company in accordance with the terms of the Contract (the “**Transfer**”), Buyer has a contingent right, as its sole and exclusive remedy, to rescind the Contract or relevant portion thereof and receive a return of the Purchase Price or relevant portion thereof, all in accordance with the provisions of Section 13 of the Contract (“**Failure of Transfer Rescission**”).

WHEREAS, following effective transfer of the Subject Stock to Buyer, if any adverse bona fide claims of title are asserted by any third parties against any of the Subject Stock, Buyer has among its available remedies a right to rescind the portion of the Contract and to receive a

return of the portion of the Purchase Price, with respect to those shares as to which such an adverse claim of title is asserted (“**Failure of Clear Title Rescission**”).

WHEREAS, the Failure of Transfer Rescission and the Failure of Clear Title Rescission shall be collectively referred to as Buyer’s “**Rescission Remedies**” under the Contract, or singularly, a “**Rescission Remedy**” under the Contract.

WHEREAS, Buyer has requested BREG to guaranty Seller’s payment obligation under Buyer’s Rescission Remedies, which obligation consists solely and exclusively of payment to Buyer of all funds Buyer paid at the closing under the Contract (“**Closing**”) with respect to the Rescission Remedy invoked.

WHEREAS, BREG has agreed to guaranty Seller’s payment obligation under Buyer’s Rescission Remedies under the Contract, in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and representations and in consideration of the covenants, promises, payments and agreements herein set forth, the adequacy, sufficiency and receipt of which are hereby acknowledged, the Buyer and BREG agree as follows:

1. BREG unconditionally guarantees Seller’s payment obligation under Buyer’s Rescission Remedies to the extent Buyer is entitled to any or both of the Rescission Remedies under the Contract.

a. The parties agree that Seller’s payment obligation under Buyer’s Rescission Remedies consists solely and exclusively of payment to Buyer of the funds Buyer paid at Closing under the Contract with respect to the Rescission Remedy. BREG shall not under any circumstances be liable to Buyer for any damages or remedy other than rescission arising out of any breach of contract or warranty of title claim under the Contract.

b. Accordingly, (i) if Buyer is entitled to the Failure of Transfer Rescission, BREG’s liability to Buyer shall consist solely and exclusively of payment to Buyer of the Purchase Price paid at Closing as to any shares not transferred to Buyer by the Ditch Company; and (ii) if Buyer is entitled to the Failure of Clear Title Rescission, BREG’s liability to Buyer shall consist solely and exclusively of payment to Buyer of the portion of the Purchase Price with respect to any shares as to which the adverse claim of title has been asserted.

c. BREG’s payment liability hereunder is expressly conditioned upon Buyer’s performance of its obligations under the Rescission Remedies as set forth in Section 13 of the Contract (Failure of Transfer Rescission) or otherwise under common law (Failure of Clear Title Rescission), including reconveyance to Seller of the shares, associated proportions of dry-up and all other things of value delivered or conveyed to Buyer in regard to those shares of Subject Stock for which Buyer is receiving a return of the Purchase Price.

2. In the event Buyer intends to pursue any lawsuit to enforce any of the Rescission Remedies under the Contract, Buyer shall provide BREG notice of such intent at least thirty (30) days prior to filing any lawsuit seeking such remedies.

3. The term of this Agreement shall commence on the Effective Date and terminate as of the date that is five years following the later of the date of (a) the Transfer of all of the Subject Stock to Buyer or (b) if the Ditch Company does not Transfer all of the Subject Stock to Buyer, the date when the conveyance of such Subject Stock is rescinded pursuant to the Failure of Transfer Recession remedy under the Contract; provided that BREG's obligations under this Agreement shall be effective and binding with respect to any Failure of Clear Title Rescission claim asserted by Buyer during such five-year period. Subject to the foregoing, this Agreement shall be a continuing guaranty, shall be binding upon BREG and shall remain in full force and effect, and shall not be discharged, impaired or affected by (and BREG waives any defenses relating to): (a) the existence or continuance of Seller as a legal entity or the insolvency, bankruptcy, receivership, reorganization, merger, consolidation, dissolution, liquidation, or termination of Seller, BREG or any other person or entity; (b) or (b) any delay, omission, failure or refusal of Buyer to take or prosecute any action for the collection or enforcement of the Recession Remedies against Seller, except that the statute of limitations shall apply and any action shall be deemed to accrue when and only when Buyer knew or in the exercise of reasonable diligence should have known that BREG was in breach of this Agreement. It is understood and agreed that this Agreement, and the undertakings, liabilities and obligations of BREG hereunder, shall not be affected, discharged, impaired or varied by any act, omission or circumstance whatsoever (whether or not specifically enumerated above) except the due and punctual payment of the obligations of Seller, and then only to the extent thereof.

4. BREG represents and warrants to Buyer that (a) it has been authorized to enter into and to perform this Agreement by all necessary and proper action and the execution and delivery of this Agreement; and (b) the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the terms or conditions of this Agreement do not conflict with or result in a breach of the terms, conditions or provisions of any restriction or provision of BREG's articles of organization or any agreement or instrument to which BREG is a party or by which BREG may be bound.

5. Notices. 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 Buyer: City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012-1555
Attn: City Attorney

with copy to: City of Aurora
15151 East Alameda Parkway, Suite 3600
Aurora, CO 80012-1555
Attn: General Manager, Aurora Water

with copy to: Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202-4432
Attn: Andrew L. Meyers, Esq.

To BREG: BREG Investment Holdings 1, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206
Attn: Legal Counsel

with copy to: BREG Investment Holdings 1, LLC
252 Clayton Street, 4th Floor
Denver, CO 80206
Attn: Mr. Greg Gallagher and Mr. Ron Corsentino

with copy to: Johnson & Repucci LLP
850 W. South Boulder Road, Suite 100
Louisville, CO 80027
Attn: Richard Johnson and Stephen Larson

6. All Notices shall be deemed effective when actually delivered, as documented in a delivery receipt; provided, however, that if the Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this section, then the first attempted delivery shall be deemed to constitute delivery and the Notice shall be effective.

7. No Attorney's Fees and Costs. In the event of any litigation, mediation, arbitration or other dispute resolution proceedings arising out of or related to this Agreement, each party agrees to be responsible for its own attorney's fees and other professional fees, costs and expenses associated with any such proceedings.

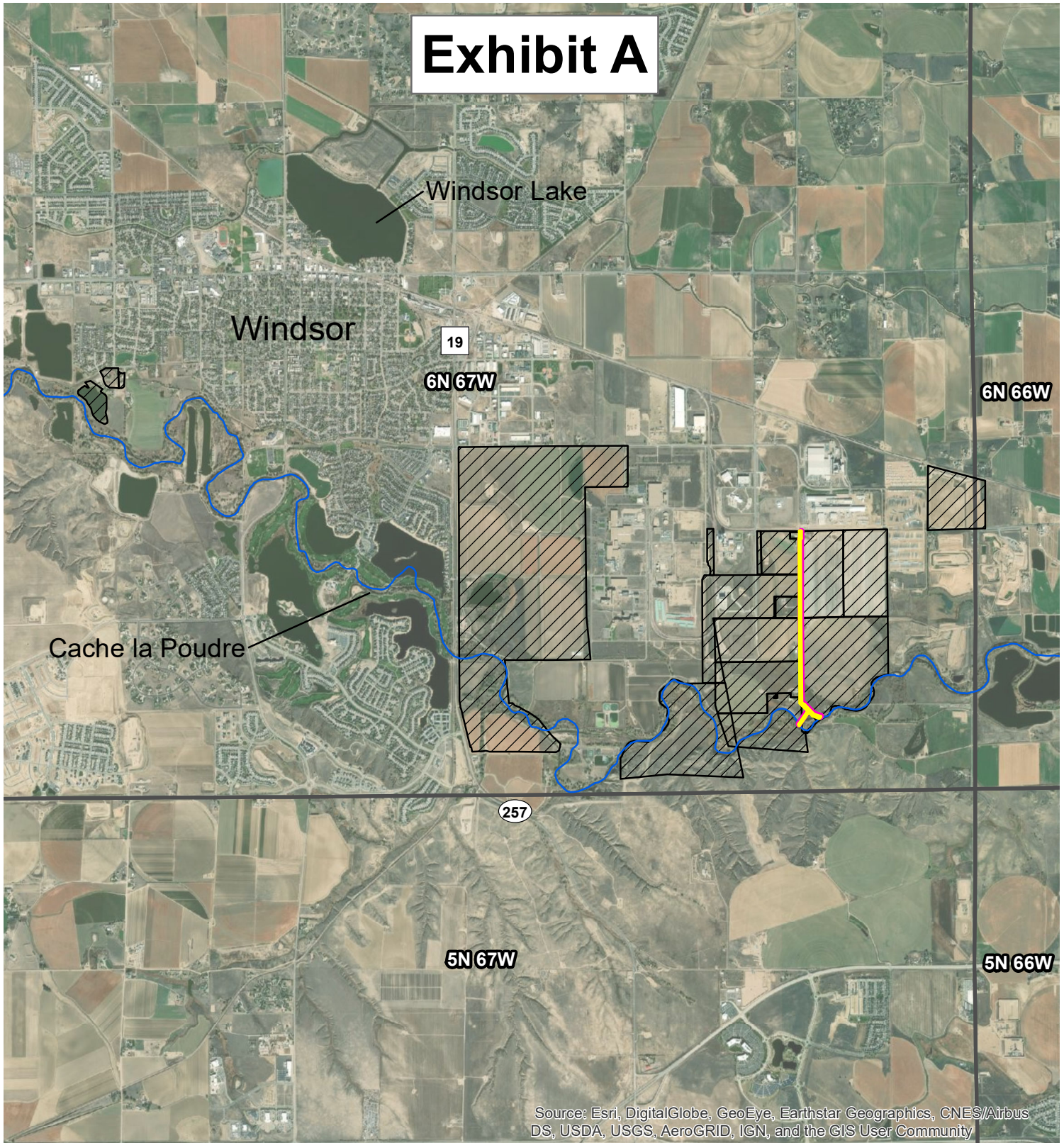
8. Non-Severability; Effect of Invalidity. Each Section in this Agreement is intertwined with the others and are not severable unless by mutual consent of Buyer and BREG or as provided for below. If any provision or portion of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable for any reason by a Court of competent jurisdiction, and the basis of the bargain between the parties is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

9. Intent of Agreement. This Agreement is intended to describe the rights and responsibilities of and between Buyer and BREG and are not intended to, and shall not be deemed to, confer rights upon any person or entities other than the parties hereto, or to limit,

impair, or enlarge in any way the powers, regulatory authority and responsibilities of Buyer or any other governmental entity not a party hereto.

[Signature pages to follow]

Exhibit A



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Whitney Ditch Purchase Weld County, CO

Aurora Water

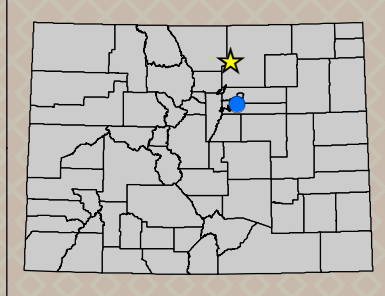
15151 E. Alameda Pkwy, Aurora, CO 80012 USA
 waterengrgis@auroragov.org | 303-739-7370
 www.auroragov.org



Aurora is Worth Discovering!



June 15, 2020



DISCLAIMER: The City of Aurora, Colorado, makes no warranties or guarantees, express or implied, as to the completeness, accuracy, or correctness of this data, nor shall the City incur any liability from any incorrect, incomplete, or misleading information contained therein. The City makes no warranties, either express or implied, of the value, design, condition, title, merchantability, or fitness for a particular purpose. The City shall not be liable for any direct, indirect, incidental, consequential, punitive, or special damages, whether foreseeable or unforeseeable, arising out of the authorized or unauthorized use of this data or the inability to use this data or out of any breach of warranty whatsoever.

— 30' Easement
● City of Aurora
— 20' Temp Easement BROE Dryups

Final Ordinances

- ◆ g. Consideration of an ORDINANCE FOR FINAL amending Sections 138-186 and 138-187 of the City Code of the City of Aurora, Colorado, relating to the conservation of water.

APPROVED: 9-0
RECONSIDERATION DATE: 12-15-2003

ORDINANCE NO.: 2003-82
EFFECTIVE DATE: 01-17-2004

10. RESOLUTIONS

- ◆ a. Consideration to APPROVE A RESOLUTION amending the Personnel Policies and Procedures Manual of the City of Aurora, Colorado.

APPROVED: 9-0
RECONSIDERATION DATE: 12-15-2003

RESOLUTION NO.: R2003-103
EFFECTIVE DATE: 12-08-2003

- ◆ b. Consideration to APPROVE A RESOLUTION approving the Amended Agreement between the Golf Enterprise of the City of Aurora, Colorado, and the Fitzsimons Redevelopment Authority for Golf Course Management Services.

APPROVED: 9-0
RECONSIDERATION DATE: 12-15-2003

RESOLUTION NO.: R2003-100
EFFECTIVE DATE: 12-08-2003

- ◆ c. Consideration to APPROVE A RESOLUTION approving an Intergovernmental Agreement between the City of Aurora, Colorado, and E-470 Public Highway Authority for Right-of-Way for the placement of utility facilities and street facilities in an area of common use.

APPROVED: 9-0
RECONSIDERATION DATE: 12-15-2003

RESOLUTION NO.: R2003-102
EFFECTIVE DATE: 12-08-2003

- ◆ **d. Consideration to APPROVE A RESOLUTION ratifying, affirming, and declaring the City of Aurora's Intent to Act by and through its Utility Enterprise to appropriate and put to beneficial use Water Rights and Water Storage Rights in the South Platte River Basin.**

APPROVED: 9-0
RECONSIDERATION DATE: Waived

RESOLUTION NO.: R2003-101
EFFECTIVE DATE: 12-08-2003

11. PLANNING MATTERS

- a. PUBLIC HEARING to consider a DENIAL BY PLANNING COMMISSION FOR A CONDITIONAL USE APPROVAL for after hours operation in a B-1 Zone for Med's Rockin Sports Bar (Hubba's Pub) at Harbor Plaza Shopping Plaza Shopping Center located 13760 East Quincy Avenue, Case No. 1980-6009-11.

CONDITIONAL USE DENIED: 10-0

RECONSIDERATION DATE: 12-15-2003

- b. PUBLIC HEARING to consider AN APPLICANTS APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY A CONDITIONAL USE for operation after midnight for Costa Verde Restaurant located at 12600 East Colfax Avenue, Case No. 2003-6031-00.

APPEAL DENIED: 10-0

RECONSIDERATION DATE: 12-15-2003

- ◆ *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 #: 10a
 SS: _____
 1st: _____
 2nd: _____

Item Title: Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving an Amendment to Intergovernmental Agreement No. 18-06.01B regarding funding the 22nd Avenue outfall to Westerly Creek Improvement Project between the City of Aurora, and the Urban Drainage and Flood Control District D/B/A mile High Flood District.
Item Initiator: Young, Sarah - Deputy Director Wtr Plan/Engin - Aurora Water
Staff Source: Young, Sarah - Deputy Director Wtr Plan/Engin - Aurora Water
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Water Policy Committee

Meeting Date: 06/24/2020

Actions Taken: Recommends Do Not Recommend

- Minutes Attached
- Minutes Not Available
- Forwarded without Recommendation
- Recommendation Report 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.)*

On March 18, 2013, City Council approved the Westerly Creek (Upstream of the Dam) Master Plan Intergovernmental Agreement #12-11.07

On August 16, 2018, the Water Policy Committee supported forwarding an Amendment to the Intergovernmental Agreement for Improvement to 22nd Avenue Outfall to Westerly Creek to Regular Session

On September 24, 2018, the City Council approved the Amendment to the Intergovernmental Agreement for Improvement to 22nd Avenue Outfall to Westerly Creek.

On June 3, 2019, the City Council approved the second Amendment to the Intergovernmental Agreement for Improvement to the 22nd Avenue Outfall to Westerly Creek.

On June 24, 2020, the Water Policy Committee supported forwarding an Amendment to the Intergovernmental Agreement for Improvement to 22nd Avenue Outfall to Westerly Creek to Regular Session

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

This project is a resulting recommendation of the Westerly Creek (Upstream of the Dam) Master Plan. This "Amendment to Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for 22nd Avenue Outfall to Westerly Creek" (the Amendment) is the third amendment to the agreement between Mile High Flood District (MHFD) previously Urban Drainage and Flood Control District UDFCD).

The project began as an upsizing of the 22nd Avenue stormwater pipe and outlet structure to reduce flooding that is known to occur on Dallas Street near Stanley Marketplace. The scope of the project was expanded to include a required water quality project as well as improve the last remaining unimproved section of Westerly Creek.

The project was originally going to be managed by the City of Aurora and thus MHFD contributed funding to the City. However, due to the new complexity of the project, it was determined that MHFD is better suited to lead the design and construction. Aurora Water will return the 22nd Avenue outfall funding and contribute additional funding for the flood prevention, water quality and recreational aspects. The District will contribute an additional \$400,000 to the project, the City of Aurora Parks, Recreation and Open Space Department has pledged \$200,000, and Aurora Water will return MHFD's original contribution of \$500,000 and contribute an additional \$2,000,000 to the project.

QUESTIONS FOR Committee

Does City Council support the Amendment to Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for the 22nd Avenue Outfall to Westerly Creek?

LEGAL COMMENTS

The Council may, by resolution, enter into contracts or agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, or for furnishing or receiving commodities or services (Charter §10-12). (McKenney)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

Funding for this amendment will be from the Capital Improvement Program, Wastewater Fund in the amount of \$2,000,000.00.

ORG USED: Westerly Creek Future Phs - SD (52364)

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

N/A

EXHIBITS ATTACHED:

1. Westerly Creek at Stanley Resolution.pdf
2. Westerly Creek at Stanley Agreement.pdf
3. Policy Committee and Council Actions.pdf
4. Map 1.pdf
5. Map 2.pdf

RESOLUTION NO. R2020 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING AN AMENDMENT TO INTERGOVERNMENTAL AGREEMENT NO. 18-06.01 REGARDING FUNDING THE 22nd AVENUE OUTFALL TO WESTERLY CREEK IMPROVEMENT PROJECT 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 CONTROL

WHEREAS, the City of Aurora, Colorado acting by and through its Utility Enterprise (the "City") and the Urban Drainage and Flood Control District d/b/a/ Mile High Flood District (the District") have entered into Intergovernmental Agreement No. 18-06.01 for final design, right-of-way acquisition and construction of drainage and flood control improvements for 22nd Ave. Outfall to Westerly Creek Improvement Project; and

WHEREAS, the City seeks to increase its funding by for this project by \$2,200,000.00 to construct certain the improvements contemplated in Agreement No. 18-06.01; 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.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Amendment to Agreement No. 18-06.01 between Aurora and the District regarding funding for improvements to the 22nd Avenue Outfall to Westerly Creek project is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the agreement 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 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this ____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN J RUGER, City Clerk

APPROVED AS TO FORM:

Ian J Best

IAN BEST, Assistant City Attorney

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN, RIGHT-OF-WAY ACQUISITION, AND CONSTRUCTION
OF DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
22ND AVENUE OUTFALL TO WESTERLY CREEK
CITY OF AURORA

Agreement No. 18-06.01B
Project No. 107146

THIS AMENDMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and CITY OF AURORA, Colorado acting by and through its Utility Enterprise (hereinafter called "CITY") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for 22nd Avenue Outfall to Westerly Creek, City of Aurora" (Agreement No. 18-06.01) dated October 30, 2018; and

WHEREAS, PARTIES now desire to construct improvements for 22nd Avenue Outfall to Westerly Creek; and

WHEREAS, PARTIES desire to increase the level of funding by \$2,600,000; and

WHEREAS, DISTRICT's Board of Directors has authorized additional DISTRICT financial participation for PROJECT (Resolution No. 09, Series of 2020); and

WHEREAS, the City Council of CITY and the Board of Directors of DISTRICT have authorized, by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is hereby deleted and replaced in its entirety with the following:

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following:

1. Final design services;
2. Delineation, description and acquisition of required rights-of-way/ easements;
3. Construction of improvements;
4. Contingencies mutually agreeable to PARTIES.

B. It is understood that PROJECT costs as defined above are not to exceed \$3,600,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>ITEM</u>	<u>AS AMENDED</u>	<u>PREVIOUSLY AMENDED</u>
1. Final Design	\$ 1,000,000.00	\$ 1,000,000.00
2. Right-of-way	\$ -0-	\$ -0-
3. Construction	\$ 2,600,000.00	\$ -0-
4. Contingency	\$ -0-	\$ -0-
Grand Total	\$ 3,600,000.00	\$ 1,000,000.00

This breakdown of costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest.

C. Based on total PROJECT costs, the maximum percent and dollar contribution by each party shall be:

	<u>Percentage Share</u>	<u>Previously Contributed</u>	<u>Additional Contribution</u>	<u>Maximum Contribution</u>
DISTRICT	25.00%	\$ 500,000	\$ 400,000	\$ 900,000
CITY	69.44%	\$ 500,000	\$2,000,000	\$2,500,000
PROS*	5.56%	\$ -0-	\$ 200,000	\$ 200,000
TOTAL	100.00%	\$1,000,000	\$2,600,000	\$3,600,000

*CITY Parks, Recreations and Open Space (PROS)

D. Subsequent to execution of this Amendment and within 30 days of written request from DISTRICT, CITY shall return DISTRICT'S previous \$500,000 contribution.

2. Paragraph 5. MANAGEMENT OF FINANCES is hereby deleted and replaced in entirety with the following:

5. MANAGEMENT OF FINANCES

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal, or other sources of funding without limitation and without prior DISTRICT approval. Payment of the funding obligation set forth in this Amendment (CITY - \$3,200,000; DISTRICT - \$400,000) shall be made to DISTRICT subsequent to execution of this Amendment and within 30 days of request for payment by DISTRICT. The payments by PARTIES shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to CITY of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund

established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, the PARTIES shall receive a share of such monies, which shares shall be computed as were the original shares; or, at CITY request, CITY share of remaining monies shall be transferred to another special fund held by DISTRICT.

3. Paragraph 6. FINAL DESIGN is hereby deleted and replaced in its entirety with the following:

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for CITY. Payment for final design services shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Delineation of required right-of-way/easements;
- C. Preparation of detailed construction plans and specifications;
- D. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- E. Preparation of an appropriate construction schedule.

DISTRICT shall provide any written work product by the engineer to CITY.

4. Paragraph 7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE is hereby deleted and replaced in its entirety with the following:

7. OWNERSHIP OF PROPERTY AND LIMITATION OF USE:

The parties acknowledge that CITY owns the property on which PROJECT is constructed either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that shall diminish or preclude its use for drainage and flood control purposes. CITY may not dispose of or change the use of the properties to diminish or preclude its use for drainage and flood control purposes without approval of DISTRICT, which shall not be unreasonably withheld. If, in the future, CITY disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use to diminish or preclude its use for drainage and flood control purposes of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any

of the improvements located on any portion of the properties upon which PROJECT is constructed to diminish or preclude its use for drainage and flood control purposes pursuant to this Agreement; and CITY has not obtained the written approval of DISTRICT prior to such action, CITY shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at CITY's sole expense. However, CITY shall not be responsible for the actions of third parties that would violate the provisions of this Paragraph who may have legal rights in the property as long as CITY has taken reasonable action to stop those actions. In the event CITY breaches the terms and provisions of this Paragraph 7 and does not voluntarily cure as set forth above, DISTRICT shall have the right to pursue a claim against CITY for specific performance of this portion of the Agreement.

5. Paragraph 8. MANAGEMENT OF CONSTRUCTION is hereby deleted and replaced in its entirety with the following:

8. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
1. DISTRICT, with the concurrence of CITY, shall administer and coordinate the construction-related work as provided herein.
 2. DISTRICT, with concurrence of CITY, shall select and award construction contract(s).
 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes CITY as a named insured. The contractor shall be required to indemnify CITY. Copies of the contractor's certificates of insurance coverage including the CITY as a named insured shall be provided to CITY.
 4. DISTRICT, with assistance of CITY, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of CITY, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to CITY on a weekly basis upon request. DISTRICT shall retain an engineer to perform all or a part of these duties.
 5. DISTRICT, with concurrence of CITY, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches;

revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.

6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
7. DISTRICT shall review and approve contractor billings. DISTRICT shall remit payment to contractor based on billings. CITY reserves the right to review the contractor billing.
8. DISTRICT, with concurrence of CITY, shall prepare and issue all written change or work orders to the contract documents.
9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
10. DISTRICT shall provide CITY a set of reproducible "as-built" plans.

C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

6. All other terms and conditions of Agreement No. 18-06.01 shall remain in full force and effect.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT D/B/A
MILE HIGH FLOOD CONTROL

By _____

Name Ken A. MacKenzie

Title Executive Director

Date _____

Checked By

City of Aurora, Colorado,
Acting by and through its
Utility Enterprise

Mike Coffman, Mayor

Date

Attest:

Stephen J. Ruger, City Clerk

Date

Approved as to form for Aurora:

Ian J Best

Ian Best, Assistant City Attorney

6/11/2020

Date

20035832

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)

- ◆ d. **2013-08**
Consideration for ADOPTION OF AN ORDINANCE of the City Council of the City of Aurora, Colorado, authorizing the use of lease-purchase financing to acquire certain equipment during the 2013 fiscal year pursuant to the terms of an equipment Lease Purchase Agreement by and between the Aurora Capital Leasing Corporation, as lessor, and the City of Aurora, Colorado, as lessee; authorizing officials of the City to take all action necessary to carry out the transactions contemplated hereby; and related matters.

Motion by Markert, second by Broom, to approve item 9d.

Voting Aye: Berzins, Broom, Hunter Holen, LeGare, Markert, Mounier, Peterson, Pierce, Roth

- ◆ e. **2013-09**
Consideration for ADOPTION OF AN ORDINANCE of the City Council of the City of Aurora, Colorado, amending Subsection 130-522(b) of the City Code related to the New Job Reward program.

Motion by Roth, second by Hunter Holen, to approve item 9e.

Voting Aye: Berzins, Broom, Hunter Holen, LeGare, Markert, Mounier, Peterson, Pierce, Roth

10. RESOLUTIONS

- ◆ a. **R2013-13**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the Intergovernmental Agreement between the City of Aurora, acting by and through its Utility Enterprise, the City and County of Denver, and Urban Drainage and Flood Control District regarding Westerly Creek.

Motion by Broom, second by Peterson, to approve item 10a.

Voting Aye: Berzins, Broom, Hunter Holen, LeGare, Markert, Mounier, Peterson, Pierce, Roth

11. PLANNING MATTERS

- a. PUBLIC HEARING to consider an appeal of the Planning Commission's decision to deny a conditional use for a fueling station in a Planned Development Zone District for Maverik Country Store.

Mayor Pro Tem Berzins opened the public hearing on the item.

Libby Tart-Schoenfelder, Senior Planner II, Planning, gave a presentation of the item.

Council Member Markert asked if the fire department had reviewed the gate for safety concerns. Ms. Tart-Schoenfelder stated it was technically a private street and was at the prerogative of the neighborhood, however, she noted Life Safety has stated no concerns about the gate.

Council Member LeGare asked if the 24 hour operation was in the proposal to follow the Super Target model. Ms. Tart-Schoenfelder answered affirmatively. Council Member LeGare asked if the Super Target were to go to 24 hours and the Maverik store followed, and then the Super Target stopped being open 24 hours, would the Maverik store be required to change their hours as well. Ms. Tart-Schoenfelder answered no. Council Member LeGare noted environmental concerns related to gas and oil running into Piney Creek were expressed in the backup material and asked staff to speak to the extensive environmental regulations the Maverik store would be

- ◆ ***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.***

Water Policy Committee (WPC) Meeting
August 16, 2018

Members Present: Council Member Bob Roth, Chair; Council Member Francoise Bergan, Vice Chair (called in); Council Member Johnny Watson

Members Absent:

Others Present: Leiana Baker, Marshall Brown, Alex Davis, Steve Fiori, Nancy Freed, Jo Ann Giddings, Pam Hensley, Don Langley (CWAC), John Murphy, Stephanie Neitzel, Kelley Neumann, Gail Thrasher, Sarah Young, Fernando Aranda

1. APPROVAL OF MINUTES

The July 12, 2018, meeting minutes were approved as presented.

2. CONSENT ITEMS

- A. Monthly Water Supply Update
- B. Construction Change Order Summary Report
- C. Quarterly Financial Update

Summary of Issue and Discussion: Council Member Bergan asked, where does the excess water go if we have a really wet season and heavy snowfall? M. Brown replied, in really wet periods we lose out at the bottom end of the system. The Prairie Waters system is ramped up pretty high to protect some of the storage. If there is a lot of water available Prairie Waters can ramp down or offer those water supplies to south metro entities and take more water out of the system/storage, and sometimes we do leases to other entities. J. Murphy added, the reason we are in good shape this year is due to being in good shape at the start of the season.

Outcome: The Consent items were supported as presented.

Follow-Up Action: The Consent items were supported as presented.

3. IMPROVEMENTS TO 22ND AVENUE OUTFALL TO WESTERLY CREEK

Summary of Issue and Discussion: S. Young stated, flooding is known to occur on Dallas St. between E. 22nd and 23rd Avenue near the Stanley Marketplace. This project will mitigate the flooding by collecting excess street flows and conveying them directly to Westerly Creek via an outfall pipe in E. 22nd Avenue. New Type-R inlet and a new 48 inch reinforced concrete pipe (RCP) will convey flows westward to a new outfall at Westerly Creek. Aurora and Urban Drainage Flood Control District will jointly fund the project.

Council Member Watson asked, is the area south of Stanley Marketplace a flood impact area. S. Young replied, there are improvements upstream that would help some of the flooding issues. Council Member Watson asked, how is the amount of rainfall predicted. S. Young replied, there are two things regarding stormwater flooding, how much rain falls over a certain period of time and the duration. An example, is a two-inch, six hour rain storm is what we would consider a one

hundred year rainfall event. It means there is a one percent chance that this amount of rain would fall in that area.

Outcome: The Committee supports the Improvements to 22nd Avenue to Outfall to Westerly Creek, and forwarded the matter to Study Session for consideration.

Follow-Up Action: The Committee supports the Improvements to 22nd Avenue to Outfall to Westerly Creek, and will forward to Study Session for consideration.

4. IMPROVEMENTS FOR ROBINSON GULCH INTERGOVERNMENTAL AGREEMENT AMENDMENT

Summary of Issue and Discussion: S. Young stated, Urban Drainage and Flood Control District (UDFCD) funded the design for the maintenance of drainage and flood control improvements for the Robinson Gulch project in 2015. Final design plans are anticipated this fall and construction is anticipated to begin in 2018. Based on available funds through the UDFCD maintenance program, funding over several years is needed to accumulate this amount. Aurora's share of the \$750,000 was split into three difference IGAs and payments.

Council Member Bergan asked, Aurora Parkway and Arapahoe Road recently flooded, is fixing that part of this project? S. Young replied, it's in the same area as Robinson Gulch, but those flooding issues are Capital Projects whereas this is a maintenance project. M. Brown added, it was a construction project and construction Best Management Practices affected the stormwater drainage. Stormwater quality measures were in place and reduced the storm drain capacity.

Outcome: The Committee supports the Improvements for Robinson Gulch Intergovernmental Agreement Amendment, and forwarded the matter to Regular Session for consideration.

Follow-Up Action: The Committee supports the Improvements for Robinson Gulch Intergovernmental Agreement Amendment, and will forward to Regular Session for consideration.

5. INTERGOVERNMENTAL AGREEMENT TO LEASE WATER TO PARK COUNTY

Summary of Issue and Discussion: A. Davis stated, Park County is currently operating a Substitute Water Supply Plan (SWSP) to replace water that the County takes from the river for road maintenance and dust suppression purposes. The SWSP for 2018 is in need of a small amount of water and the County has requested a temporary lease from the City for this purpose. The lease provides for up to a total of fifteen (15) acre-feet to be delivered from Spinney Mountain Reservoir by December 31, 2018, and the price is \$300 per acre-foot.

Outcome: The Committee supports the Intergovernmental Agreement to Lease Water to Park County, and forwarded the matter to Regular Session for consideration.

Follow-Up Action: The Committee supports the Intergovernmental Agreement to Lease Water to Park County, and will forward to Regular Session for consideration.

Council Member Gruber asked if the City has supported other restaurants located in Ward I. Mr. Gonerka answered affirmatively.

Council Member Murillo asked Mr. Gonerka to speak to the City's restaurant incentive program, noting it was a great program. Mr. Gonerka did so, noting it was a program approved by Council to incentivize restaurants to come into northwest Aurora specifically with the goal of creating restaurant venues in spaces where there were not any. Council Member Murillo reiterated it was a great program and discussed the Transforming Safety Initiative grant funding program that was designed to reduce crime via community development.

Voting Aye: Bergan, Berzins, Gruber, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ b. **R2018-88**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, for the termination of a Drainage Easement to allow for the dedication of a Drainage & Trail Easement over the Bolling Drive Tributary. **(This Item Also Appears on the September 24, 2018 Study Session) (Due to this item being dual listed, the backup is included in item 2a of the Study Session Packet.)**
STAFF SOURCE: Hector Reynoso, Manager Real Property Services, Public Works

Motion by Roth, second by Watson, to approve item 10b.

Voting Aye: Bergan, Berzins, Gruber, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ c. **R2018-89**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the Intergovernmental Agreement between Community College of Aurora and the City of Aurora for Joint use of facilities. STAFF SOURCE: Byron Fanning, Manager of Recreation Services, Parks, Recreation & Open Space

Motion by Gruber, second by Bergan, to approve item 10c.

Voting Aye: Bergan, Berzins, Gruber, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ d. **R2018-90**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the Intergovernmental Agreement between the City of Aurora, Colorado, acting by and through its Utility Enterprise, and the Urban Drainage and Flood Control District, regarding final design, right-of-way acquisition, and construction of drainage and flood control improvements for 22nd Avenue outfall to Westerly Creek. STAFF SOURCE: Sarah Young, Water Planning Services Manager, Aurora Water

Motion by Berzins, second by Roth, to approve item 10d.

Voting Aye: Bergan, Berzins, Gruber, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ *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: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ c. **R2019-36**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving an amendment to the Intergovernmental agreement between the City of Aurora, Acting by and through its Utility Enterprise, and the Urban Drainage and Flood Control District regarding final design, right-of-way acquisition and construction of drainage and flood control improvements for First Creek Detention Upstream of I-70 in the City of Aurora. STAFF SOURCE: Sarah Young, Deputy Director of Planning and Engineering, Aurora Water

Motion by Berzins, second by Murillo, to approve item 10c.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ d. **R2019-37**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving an Amendment to the Intergovernmental Agreement between the City of Aurora, Colorado, acting by and through its Utility Enterprise, and the Urban Drainage and Flood Control District, regarding final design, right-of-way acquisition, and construction of drainage and flood control improvements for 22nd Avenue outfall to Westerly Creek. STAFF SOURCE: Sarah Young, Deputy Director of Planning and Engineering, Aurora Water

Motion by Watson, second by Roth, to approve item 10d.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ e. **R2019-38**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, for the Agreement Regarding Member Funding Transfers Pursuant to the Aerotropolis Regional Transportation Authority Establishment Agreement. ***(Staff Requests a Waiver of Reconsideration) (This item will also appear on the June 3, 2019 Study Session) (Due to this item being dual listed, the backup is included in item 4b of the Study Session Packet.)*** STAFF SOURCE: Michelle Gardner, Senior Assistant City Attorney, City Attorney

Motion by Gruber, second by Roth, to approve item 10e with a waiver of reconsideration.

Voting Aye: Bergan, Berzins, Gruber, Hiltz, Johnston, Lawson, Murillo, Richardson, Roth, Watson

- ◆ f. **R2019-39**
Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, supporting and declaring June 7, 2019 as national gun violence awareness day. Sponsor: Council Member Johnston

Misty Glover, Aurora Moms Demand Action for Gun Sense in America, discussed her disappointment in the proclamation request denial by Mayor LeGare and the increased and recent gun violence in Aurora. She pointed out victims deserved leadership that supported them and noted her intention to vote for people to do that.

- ◆ ***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.***

Water Policy Committee (WPC) Meeting
June 24, 2020

Members Present: Council Member Marsha Berzins, Chair; Council Member Alison Coombs Vice Chair; Council Member Francoise Bergan

Others Present: Casey Rossman, Greg Baker, Leiana Baker, Jo Ann Giddings, Rory Franklin, John Murphy, Dan Mikesell, Marshall Brown, Stephanie Neitzel, Sarah Young, Alex Davis, Gail Thrasher, Christine McKenney, Nancy Freed, Fernando Aranda

3. Westerly Creek at Stanley Intergovernmental Agreement (IGA)

Summary of Issue and Discussion: S. Young stated, this project is a resulting recommendation of the Westerly Creek (Upstream of the Dam) Master Plan. This “Amendment to Agreement Regarding Final Design, Right-of-Way Acquisition and Construction of Drainage and Flood Control Improvements for 22nd Avenue Outfall to Westerly Creek” (the Amendment) is the third amendment to the agreement between Mile High Flood District (MHFD) previously Urban Drainage and Flood Control District UDFCD).

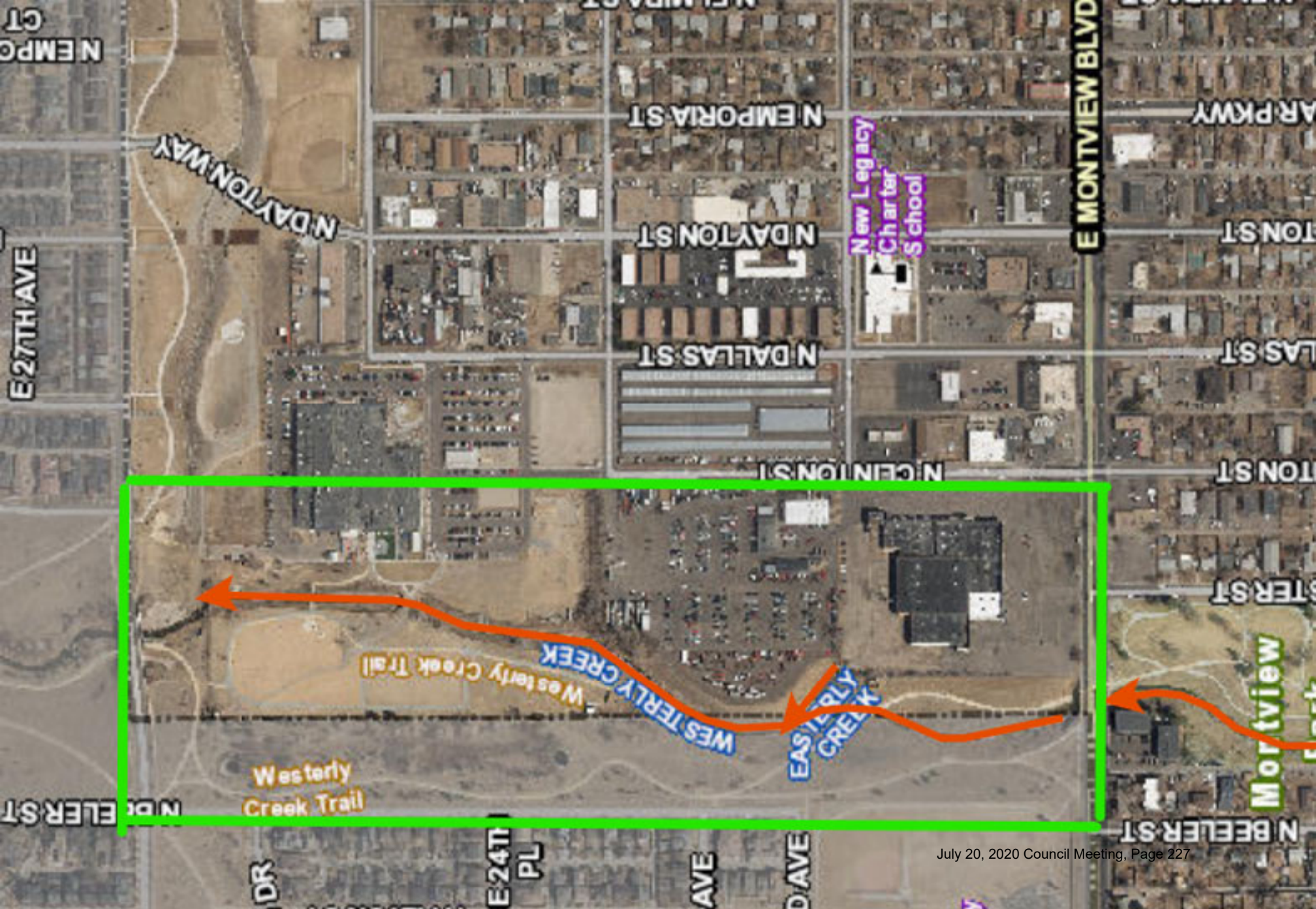
The project began as an upsizing of the 22nd Avenue stormwater pipe and outlet structure to reduce flooding that is known to occur on Dallas Street near Stanley Marketplace. The scope of the project was expanded to include a required water quality project as well as improve the last remaining unimproved section of Westerly Creek.

The project was originally going to be managed by the City of Aurora and thus MHFD contributed funding to the City. However, due to the new complexity of the project, it was determined that MHFD is better suited to lead the design and construction. Aurora Water will return the 22nd Avenue outfall funding and contribute of \$500,000 and contribute additional funding for the flood prevention, water quality and recreational aspects. The MHFD will contribute an additional \$400,000 to the project, the City of Aurora Parks, Recreation and Open Space Department has pledged \$200,000, and Aurora Water will contribute an additional \$2,000,000 to the project.

Council Member Bergan asked, if this is not a floodplain will it prevent flooding? S. Young replied, yes. This isn’t an actual regulated floodplain. We are aware of flooding in the area and additional mapping is needed. Council Member Bergan asked, will this help residents with their flood insurance. S. Young replied, since this area is not a regulated floodplain, residents are not required to carry flood insurance. There is however, a Community Rating System program for which Aurora Water is a part, and because of projects like this one, Aurora Water has a very high Community Rating which in turn does provide a discount to those individuals who do purchase flood insurance.

Outcome: The Committee supports the Westerly Creek at Stanley IGA and forwarded to Study Session for consideration.

Follow-Up Action: The Committee supports the Westerly Creek at Stanley IGA and will forward to Study Session for consideration.



New Legacy
Charter
School

Westerly Creek Trail

WESTERLY CREEK

EASTERLY CREEK

Westerly
Creek Trail

Mortview



E SMITH RD
E MARTIN LUTHER KING JR BLVD
E 29TH AVE
PARK BLVD
N CENTRAL
E MONTVIEW BLVD
N PEORIA ST
E COLFAX AVE
N CHAMBERS RD
N QUEBEC ST
E 6TH AVE
E LOWRY BLVD
N HAVANA ST
E ALAMEDA AVE
N DEL MAR CIR
N DEL MAR CIR
PEORIA ST
E 6TH AVE





City of Aurora

COUNCIL AGENDA COMMENTARY

Item #: 10b
SS: _____
1st: _____
2nd: _____

Item Title: Consideration to APPROVE A RESOLUTION by the City Council of the City of Aurora, Colorado for the Agreement Between the City of Aurora and the Colorado Department of Revenue, Division of Motor Vehicles, Regarding Commercial Driver License Testing.
Item Initiator: Pettinato Mosley, Renee - Risk Manager - Human Resources
Staff Source: Pettinato Mosley, Renee - Risk Manager - Human Resources
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

ACTIONS(S) PROPOSED (Check all appropriate actions)

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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.)

A rule change in 2015 by Division of Motor Vehicles required an Intergovernmental Agreement for the City to continue CDL Driver Testing. The initial agreement was for three (3) years with a two year extension. That agreement has expired and needs to be renewed.

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

The Colorado Division of Motor Vehicles (DMV) requires Aurora to enter into an agreement with the state in order to continue providing Commercial Drivers' License (CDL) testing for city employees. Aurora has approximately 365 employees in multiple departments who are required to have CDLs as a condition of employment. By renewing this agreement, which was originally approved in 2015, Aurora will be able to continue conducting the necessary in-house CDL skills testing for Aurora employees for the next three years. Training new CDL drivers and testing in-house represents a significant cost savings to the City. The City's two testers conduct an average of 50 tests per year. If the agreement is not approved, the City will have to outsource training and testing which would significantly increase costs as outside trucking schools would charge approximately \$3,975 per employee for a four week course. The two testers for Aurora are in Water and Public Works. The cost paid to the DMV to maintain an in-house testing unit is \$ 1,332 per year for the testing unit fee and two testers. Testers must attend any continuing education courses related to CDL testing mandated by the State. Additionally, testers spend an average of 90 minutes with each new CDL driver during testing; the testers' salaries are approximately \$27.57/hour not including benefits. The City needs the council's approval of the agreement to continue performing this critical training function.

QUESTIONS FOR Committee

Does Council approve the IGA to enable the City to continue in-house CDL Testing?

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) (Gardner)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

No

ORG USED: 49011, Street maintenance

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

N/A

EXHIBITS ATTACHED:

CDL Driver Testing Resolution 6-8-2020.pdf
City of Aurora CDL IGA.PDF

RESOLUTION NO. R2020-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA,
COLORADO, APPROVING AN AGREEMENT BETWEEN THE CITY OF
AURORA AND THE COLORADO DEPARTMENT OF REVENUE, DIVISION
OF MOTOR VEHICLES, REGARDING COMMERCIAL
DRIVER LICENSE TESTING

WHEREAS, pursuant to C.R.S. § 42-2-111(1)(b), the Colorado Department of Revenue, Division of Motor Vehicles, Driver Testing and Education (“DMV”) is authorized to certify appropriate third parties to test and train applicants for licensing (“CDL Testing”); and

WHEREAS, DMV desires to authorize the City of Aurora, Colorado (“City”), to administer and provide CDL Testing on behalf of the State, as provided in 1 CCR 204-30 Rule 7 as currently written or hereafter amended; 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.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA:

Section 1. The Agreement between the City and the Colorado Department of Revenue, Division of Motor Vehicles, Regarding Commercial Driver License Testing is hereby approved.

Section 2. All resolutions of the City in conflict herewith are hereby rescinded.

Section 3. The Mayor and City Clerk are hereby authorized to execute and deliver the 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.

RESOLVED AND PASSED this _____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN D. RUGER, City Clerk

APPROVED AS TO FORM:

CMcK

Michelle Gardner

MICHELLE GARDNER, Sr. Asst. City Attorney

STATE OF COLORADO INTERGOVERNMENTAL CDL TESTING AGREEMENT

COVER PAGE

State Agency Department of Revenue	Contract Number CMS #160234		
Contractor City of Aurora	Agreement Performance Beginning Date The Later of The Effective Date or July 1, 2020		
Agreement Maximum Amount No Cost Contract	Initial Agreement Expiration Date June 30, 2023		
Total for All State Fiscal Years \$0.00	Authority Authority to enter into this Contract exists in CRS §24-35-105. Authority to certify appropriate third parties to test and train applicants for licensing exists in CRS §42-2-1 1(1)(b).		
Contract Purpose Through this Contract, the State authorizes Contractor to administer and provide Commercial Driver’s License (“CDL”) Testing on behalf of the State as provided in 1 CCR 204-30 Rule 7, as currently written or hereafter amended.			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work 2. Exhibit B – Land Use Authorization 3. Exhibit C – Sample Option Letter <p>In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Colorado Special Provisions in §18 of the main body of this Contract 2. The provisions of the other sections of the main body of this Contract 3. Exhibit A, Statement of Work 4. Exhibit B, Land Use Authorization 5. Exhibit C, Sample Option Letter 			
Principal Representatives <table style="width: 100%;"> <tr> <td style="width: 50%;"> For the State: Robert Baker CDOR, Division of Motor Vehicles Driver’s License Administration, Rm 130 P.O. Box 173350 Denver, CO 80217-3350 robertm.baker@state.co.us (303) 205-8391 </td> <td style="width: 50%;"> For Contractor: Name City of Aurora 15740 E. 32nd Ave. Aurora, CO 80011 jwarren@auroragov.org (303) 326-8120 </td> </tr> </table>		For the State: Robert Baker CDOR, Division of Motor Vehicles Driver’s License Administration, Rm 130 P.O. Box 173350 Denver, CO 80217-3350 robertm.baker@state.co.us (303) 205-8391	For Contractor: Name City of Aurora 15740 E. 32nd Ave. Aurora, CO 80011 jwarren@auroragov.org (303) 326-8120
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SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p>CONTRACTOR City of Aurora</p> <p>By: _____ Signatory name & title</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, Governor Department of Revenue Lu Córdova, Executive Director</p> <p>By: _____ Mike Dixon, Director Division of Motor Vehicles</p> <p>Date: _____</p>
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1. PARTIES

This Contract is entered into by and between Contractor named on the Cover Page for this Agreement (the “Contractor”), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the “State”). Contractor 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. The State shall not be bound by any provision of this Agreement before the Effective Date or after the expiration or sooner termination of this Agreement.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

- i. The term of this Agreement is contingent upon the issuance and continuous maintenance of a valid license authorizing the Testing Unit to provide services. Notwithstanding anything in this Agreement to the contrary, the license of a Testing Unit may be revoked, canceled, or suspended by the State in accordance with 1 CCR 204-30 Rule 7, including, but not limited to, 7(O). Any loss of license by Contractor shall be sufficient cause for the immediate termination of this Agreement, at the State’s sole discretion. Permanent loss of license by Contractor shall result in immediate termination of this Agreement.

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in the Agreement (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to **Exhibit C**, attached hereto. Except as stated in **§2.D**, the total duration of this Agreement, including the exercise of any options to extend, shall not exceed five years from its Effective Date.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Contractor as provided in **§14**, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. 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, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for breach by Contractor, which shall be governed by **§12.A.i**.

i. Method and Content

The State shall notify Contractor of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Contractor shall be subject to the rights and obligations set forth in **§12.A.i.a**.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. "Breach of Contract"** means 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. If Contractor is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- B. "CDL Driving Skills Tester"** means a person licensed by the State under the provisions of C.R.S. §42-2-407 to administer a CDL Skills Test.
- C. "CDL Testing Unit" or "Testing Unit"** means either a business, association, or governmental entity licensed by the State under the provisions of C.R.S. §42-2-407 to administer a CDL Skills Test.
- D. "Commercial Driver's License"** means a license issued to an individual in accordance with the requirements of the federal Commercial Motor Vehicle Safety Act of 1986 and State laws, rules and regulations, including CRS § 42-2-401 et seq., as currently written or hereafter amended. A card issued by the State which entitles the holder while having such document in his or her

immediate possession, to drive a motor vehicle of certain classes and endorsements upon the highways without supervision.

- E. **“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.
- F. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1, *et. seq.*, C.R.S.
- G. **“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 Page for this Agreement.
- H. **“Exhibits”** means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- I. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401 *et. seq.* C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State’s knowledge, instruction, or consent.”
- J. **“Party”** means the State or Contractor, and **“Parties”** means both the State and Contractor.
- K. **“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 and 24-73-101, C.R.S.
- L. **“Services”** means the services to be performed by Contractor as set forth in this Agreement, and shall include any services to be rendered by Contractor in connection with the Goods.
- M. **“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 PCI. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- N. **“State Fiscal Rules”** means that fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- O. **“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.
- P. **“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.
- Q. **“Subcontractor”** means third-parties, if any, engaged by Contractor to aid in performance of the Work.
- R. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Contractor shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**. The State shall have no liability to compensate Contractor for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO CONTRACTOR

This is a no cost Agreement. The State has no obligation to pay Contractor for any Goods or Services provided by Contractor. Contractor shall be solely liable for all costs associated with the implementation and continued operation of Services under this Agreement, including, but not limited to, computer hardware and software, equipment, utilities, personnel, wages, rents, State audits, licenses, certifications, transportation, travel, insurance, bonds, and/or administration.

6. REPORTING - NOTIFICATION

A. Reports

The State shall submit an annual audit report to Contractor containing an evaluation and review of Contractor's performance and status of Contractor's obligations hereunder. Contractor shall comply with all reporting requirements set forth in **Exhibit A**, and 1 CCR 204-30 Rule 7, as currently written or hereafter amended.

B. Litigation Reporting

If Contractor 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 Contractor's ability to perform its obligations under this Agreement, Contractor 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 on the Cover Page for this Agreement.

C. Performance Outside the State of Colorado or the United States, §24-102-206, C.R.S.

To the extent not previously disclosed in accordance with §24-102-206, C.R.S., Contractor shall provide written notice to the State, in accordance with **§14** and in a form designated by the State, within 20 days following the earlier to occur of Contractor's decision to perform Services outside of the State of Colorado or the United States, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations, and such notice shall be a public record. Knowing failure by Contractor to provide notice to the State under this section shall constitute a breach of this Agreement. This section shall not apply if the Agreement Funds include any federal funds.

7. CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date three years after the date this Agreement expires or is terminated, **(ii)** the resolution of any pending Agreement matters, or **(iii)** if an audit is occurring, or Contractor has received notice that an audit is pending, the date such audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the State to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two 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, in its discretion, may monitor Contractor's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Audit Report

Contractor shall promptly submit to the State a copy of any final audit report of an audit performed on Contractor's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Contractor or a third party.

E. Additional Recording and Auditing Requirements

Contractor shall comply with the recording and auditing requirements described in 1 CCR 204-30 Rule 7, as currently written or hereafter amended, including, but not limited to, Rule 7(M).

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Contractor shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in Writing by the State. Contractor 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. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI. Contractor shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Contractor 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. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions.

C. Use, Security, and Retention

Contractor 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. Contractor shall provide the State with access, subject to Contractor'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, Contractor shall return State Records provided to Contractor or destroy such State Records and certify to the State that it has done so, as directed by the State. If Contractor is prevented by law or regulation from returning or destroying State Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Contractor 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 Contractor can establish that none of Contractor or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor 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. The State may, in its sole discretion and at Contractor's sole expense, require Contractor to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Contractor shall provide the State with the results of such audit and evidence of Contractor's planned remediation in response to any negative findings.

E. Data Protection and Handling

Contractor shall ensure that all State Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Agreement, including the requirements of any Exhibits hereto, at all times.

F. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Agreement, Contractor shall provide for the security of 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. Contractor 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.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor 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 Contractor under this Agreement. Such a conflict of interest would arise when a Contractor 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.

B. Apparent Conflicts of Interest

Contractor 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, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor 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.

10. INSURANCE

Contractor 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 as approved by the State.

A. Contractor Insurance

The Contractor 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

Contractor 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. Contractor 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 Contractor or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance 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 one 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.

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 Contractor and Subcontractors.

D. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor 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 Contractor and Contractor shall forward such notice to the State in accordance with §14 within seven days of Contractor's receipt of such notice.

F. Subrogation Waiver

All commercial insurance policies secured or maintained by Contractor 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 Contractor or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

G. Certificates

For each commercial insurance plan provided by Contractor under this Agreement, Contractor shall provide to the State certificates evidencing Contractor's insurance coverage required in this Agreement within seven Business Days following the Effective Date. Contractor shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within seven Business Days following the Effective Date, except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor 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, Contractor shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §10.

H. Bond Requirement

Contractor, unless an agency of government or a Colorado school district, shall maintain a surety bond in the amount of \$20,000.00 in accordance with 1 CCR 204-30 Rule 7 and applicable federal regulations. This Contract incorporates by reference Code of Federal Regulations ("C.F.R."), Title 49, Subtitle B, Chapter I, Subchapter C, parts 171 and 172, and C.F.R., Title 49, Subtitle B, Chapter III. If Contractor is an agency of government or any Colorado school district that will administer CDL driving tests outside of their unit, Contractor must maintain a surety bond in the amount of \$5,000.00. A surety company authorized to do business in Colorado must execute the bond. The coverage required hereunder shall be issued by insurance companies satisfactory to Contractor and the State. Such bond must inure to the benefit of the State and shall remain in force through the term of the Contract, including any extensions. A certificate evidencing coverage must be delivered to the State prior to execution of the Contract and prior to each subsequent Extension Term. The bond must be for the use and benefit of the State in the event of a monetary loss within the limitations of the bond, attributable to the willful, intentional, or negligent conduct of the Testing Unit or its agents or employees. If the amount of the bond is decreased or terminated, or if there is a final judgment outstanding on the bond, the Testing Unit cannot test outside their unit. The bond contract shall contain a provision that indicates that any modifications or cancellation of such bond can occur only sixty (60) days after written notice to the State. Failure of Contractor to maintain the required surety bond may, at the State's sole discretion, result in the immediate termination of this Contract.

11. BREACH OF CONTRACT

In the event of a Breach of Contract, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §12 for that Party, or 1 CCR 204-30 Rule 7, as currently written or hereafter amended. 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 this Agreement in order to protect the public interest of the State; or if Contractor is debarred or suspended under §24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Contractor 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 §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law, including, but not limited to, 1 CCR 204-30 Rule 7(O). 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 Contractor's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Contractor 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, Contractor 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, Contractor shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Contractor shall assign to the State all of Contractor's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor but in which the State has an interest. At the State's request, Contractor shall return materials owned by the State in Contractor's possession at the time of any termination. Contractor 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. Damages and Withholding

Notwithstanding any other remedial action by the State, Contractor shall remain liable to the State for any damages sustained by the State in connection with any breach by Contractor.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Contractor to an adjustment in price or cost or an adjustment in the performance schedule. Contractor 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 Contractor after the suspension of performance.

b. Removal

Demand immediate removal of any of Contractor'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.

c. **Intellectual Property**

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Contractor shall, as approved by the State **(i)** secure that right to use such Work for the State and Contractor; **(ii)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(iii)** remove any infringing Work and refund the amount paid for such Work to the State.

B. Contractor's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Contractor, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. 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 Contractor for resolution.

B. Resolution of Controversies

If the initial resolution described in §13.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-102-202(3), C.R.S. for resolution in accordance with the provisions of §§24-106-109, and 24-109-101.1 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.

14. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement 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 **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's principal representative at the address set forth below or **(C)** as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. 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 on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative by notice submitted in accordance with this section without a formal amendment to this Agreement.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Contractor 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 Contractor is under contract with the State at the time, Contractor 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. To the extent that Work Product would fall under the definition of “works made for hire” under 17 U.S.C.S. §101, the Parties intend the Work Product to be a work made for hire.

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”). Contractor shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Contractor’s obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Contractor 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 Contractor

Contractor retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Contractor 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 Contractor under the Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, “Contractor Property”). Contractor 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.

16. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §16 shall apply. Contractor agrees to be governed by and comply with the provisions of §24-106-103, §24-102-206, §24-106-106, and §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”). Contractor’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.

17. GENERAL PROVISIONS

A. Assignment

Contractor’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 Contractor’s rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Contractor shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Contractor 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 §17.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. 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.

H. 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 Agreement by reference.

I. 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 Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. 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.

K. 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 this Agreement.

L. 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 this Agreement and shall be enforceable by the other Party.

M. 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 Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Contractor may wish to have in place in connection with this Agreement.

N. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §17.A, 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 this Agreement, and do not create any rights for such third parties.

O. 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.

P. 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.

Q. Standard and Manner of Performance

Contractor shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession. Contractor shall comply with all requirements of 1 CCR 204-30 Rule 7 and all other applicable rules and laws.

R. Licenses, Permits, and Other Authorizations

Contractor 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.

S. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Agreement.

ii. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §8 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §8.

18. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Agreement 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 Agreement 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 Agreement. 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 Agreement. 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 Agreement 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 Agreement 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 Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION

State or other public funds payable under this Agreement 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 Agreement 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 Agreement, including, without limitation, immediate termination of this Agreement 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 Agreement. 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.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT A, STATEMENT OF WORK

This **Exhibit A – Statement of Work** is part of that certain agreement, CMS #160234 ("Agreement"), by and between Contractor named on the Cover Page of this Agreement, and the State of Colorado acting by and through the Colorado Department of Revenue, Division of Motor Vehicles ("State" or "DMV"). In the event of a conflict or inconsistency between the Agreement and its exhibits and attachments, such conflict or inconsistency shall be resolved in the manner specified on the Cover Page of this Agreement. Any references to defined terms that are not specifically defined herein shall have the same meaning as those set forth in the Agreement and its Exhibits.

Contractor shall provide the following testing services to the State and applicants in accordance with this Exhibit A, 1 CCR 204-30 Rule 7, as currently written or hereafter amended, State laws, and pursuant to the terms of this Agreement.

- A. On behalf of the State, Contractor shall competently provide CDL driving skills testing services to the State and applicants pursuant to and consistent with the intent of all applicable Federal and State laws, the terms of this Agreement; the Rules and Regulations for the Commercial Driver's License (CDL) Program, 1 CCR 204-30, Rule 7, as currently written or hereafter amended, and the current CDL Tester's manual, as currently written or hereafter updated, and is hereby incorporated by reference. The CDL Tester's manual is available by request through the DMV.
- B. Contractor shall at all times have a valid, signed Agreement with the State prior to providing the services pursuant to this Agreement. Additionally, Contractor and the CDL Driving Skills Tester shall be in possession of a valid license in accordance with 1 CCR 204-30 Rule 7, as currently written or hereafter amended, prior to providing Services authorized by this Agreement.
- C. The Contractor shall have written permission from the landowner to administer the CDL vehicle basic control tests on areas not owned by the Contractor. This written permission, in a form substantially equivalent to **Exhibit B**, attached and incorporated herein, shall be submitted to the State for approval prior to testing.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

EXHIBIT B

Land Use Authorization

The land used for the purposes of Driver Skills Testing by any CDL Testing Unit shall require written permission from the respective landlord or land owner on this form and submit to the CDL Compliance Section for approval prior to driver skill testing.

<i>This certification confirms that</i>	Landowner Last Name	First Name	
	Testing Unit Name		
<i>grants permission to</i>			
<i>for the purpose of administering the CDL Driving Skills Test and State inspections.</i>			
Property Street Address			
City		State	ZIP
<i>This property will be used for the purposes of CDL Driver Skills Testing and access to the testing area will be granted to the State of Colorado CDL Compliance Section for inspection at any time.</i>			
Land Owner Representative Last Name (print)		First Name (print)	
Land Owner Representative Signature		Phone	Date
<i>This authorization expires on</i>	Date		

EXHIBIT C, SAMPLE OPTION LETTER

OPTION LETTER

State Agency Department of Revenue	Option Letter Number
Contractor	Original Contract Number CMS #
Current Contract Maximum Amount No Cost Contract	Option Contract Number CMS #
	Contract Performance Beginning Date The Effective Date
	Current Contract Expiration Date
Total for All State Fiscal Years	\$0.00

- 1. OPTIONS:**
Option to extend for an Extension Term.
- 2. REQUIRED PROVISIONS:**
 - A.** In accordance with Section 2.C of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning {insert date} and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
- 3. OPTION EFFECTIVE DATE:**
 - A.** The effective date of this Option Letter is upon approval of the State Controller or {insert date}, whichever is later.

STATE OF COLORADO
Jared S. Polis, Governor
 Department of Revenue
 Lu Córdoba, Executive Director

 By: Mike Dixon, Director
 Division of Motor Vehicles

Date: _____



**City of Aurora
Council Agenda Commentary**

Item #: 10c
 SS: 7/6/20
 1st: _____
 2nd: _____

Item Title: Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, approving the Intergovernmental Agreement between the City of Aurora, Colorado, and the Counties of Adams and Arapahoe, Colorado, for the establishment of a Veteran’s Service Office.
Item Initiator: Palmisano, Lucas "Luke" - Intergovernmental Rltns Mgr - General Management
Staff Source: Palmisano, Lucas "Luke" - Intergovernmental Rltns Mgr - General Management
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 1.0--Assure a safe community for people

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

- Approve Item as proposed at Study Session Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting Information Only

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee

Name: Federal, State and Intergovernmental Relations Policy Committee

Meeting Date: 06/26/2020

- Minutes Attached
- Minutes Not Available

Actions Taken: Recommends Do Not Recommend

- Forwarded without Recommendation
- Recommendation Report 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.)*

IGA was vetted at the June 26 FSIR Committee

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

A draft Intergovernmental Agreement has been developed by staff from the City of Aurora, Adams County, and Arapahoe County for the provision of a full time employee and associated office and technical support for the purposes of providing wrap-around services for veterans at a location near the VA facility on the Fitzsimmons campus.

QUESTIONS FOR COUNCIL

Does Council support moving the VA IGA forward to the next available City Council meeting for formal consideration?

LEGAL COMMENTS

The state and its political subdivisions may contract with one another to provide any function, service, or facility lawfully authorized to each of the contracting units. (Colo. Const. Art. XIV, Section 18 and C.R.S. Sec. 29-1-203 and City Charter Sec. 10-12) (Rodgers)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

The City of Aurora shall be responsible for 100% of the cost of supplies reasonably needed by the Veterans Service Officer in performance of the Officer’s duties during the one (1) year pilot program. Such supplies will include: (i) Computer, screen, mouse, printer, chair, desk, file cabinet, phone (ii) A reasonable amount of office supplies such as pens, pencils, paper, staplers, etc.

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

N/A

EXHIBITS ATTACHED:

- 2020-Aurora-Adams-Arapahoe-VA-IGA.pdf
- 2020-Aurora-Adams-Arapahoe-VA-IGA-Resolution.pdf

RESOLUTION NO. R2020-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, COLORADO, AND THE COUNTIES OF ADAMS AND ARAPAHOE, COLORADO, FOR THE ESTABLISHMENT OF A VETERAN'S SERVICE OFFICE

WHEREAS, Article XIV, Section 18 of the Colorado Constitution and Section 29-1-203, C.R.S., allow the state and its political subdivisions to contract with one another to provide any function, service, or facility lawfully authorized to each of the contracting units; and

WHEREAS, the City of Aurora, Colorado (the "City"), Arapahoe County and Adams County collectively ("the Counties") wish to enter into an Intergovernmental Agreement (the "Agreement"), for the establishment of a Veterans Service Office to provide services to those who have served our country in the armed services; and

WHEREAS, the City and the Counties wish to enter into the Agreement to set forth the respective responsibilities of the City and the Counties regarding the duties and obligations of the City and the Counties with respect to the Veterans Service Office; and

WHEREAS, the City Council of the City finds and determines that such agreement is in the best interests of the City and its citizens; and

WHEREAS, Section 10-12 of the City Charter requires that the City Council adopt a resolution in order to authorize the execution and delivery of an intergovernmental agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA:

Section 1. The Intergovernmental Agreement attached to this resolution between the City of Aurora, Colorado, Arapahoe County and Adams County, Colorado, for the establishment of the veteran's service office is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute and deliver said 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 resolutions or parts of resolutions of the City of Aurora, Colorado, in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this _____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:



HANOSKY HERNANDEZ,
Assistant City Attorney

**INTERGOVERNMENTAL AGREEMENT
VETERANS SERVICE OFFICER POSITION**

This Intergovernmental Agreement (“Agreement”), dated for reference purposes on this _____ day of _____, 2020, is made and entered into by and between the CITY OF AURORA, COLORADO, a body politic, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, COLORADO, a body politic and THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS, COLORADO, a body politic, for the provision of a Veterans Service Officer position that will serve citizens of all three entities.

WHEREAS, each county in Colorado has a veteran’s service office that offers free assistance to veterans through a veteran service officer(s); and

WHEREAS, the City of Aurora enjoys a strong partnership with both Arapahoe County and Adams County and supports the counties’ efforts to provide assistance to veterans through its veterans service offices located in Westminster (Adams) and Littleton (Arapahoe); and

WHEREAS, with the opening of the VA Eastern Colorado Health Care System (“VA Hospital”) in Aurora, the parties believe that a placement of a veteran services officer near the VA Hospital will be a great benefit to their resident veterans; and

WHEREAS, the parties have committed to a pilot program for one (1) year to share the responsibility of a veteran’s service officer position on the terms and conditions stated in this Agreement; and

WHEREAS, during this pilot program, Arapahoe County would employ the veterans service officer, dividing the compensation evenly with Arapahoe County, and host the position at Arapahoe County’s location ten (10) minutes from the VA Hospital; and

WHEREAS, during this pilot program, the City of Aurora will provide office supplies such as a computer, printer/fax machine, desk and chairs; and

WHEREAS, the parties agree that this additional veteran services officers to meet the needs of resident veterans from the area.

NOW THEREFORE, the parties agree as follows:

I) RESPONSIBILITIES OF THE PARTIES

A) Adams County

1) Veterans Service Officer

- (a) Adams County will be responsible for the hiring of one Veterans Services Officer (“VSO”) contemplated by this Agreement and shall be responsible for the supervision of the VSO, and management of the workload for the VSO. The position under this Agreement is contemplated to be for one (1) year as a pilot

program beginning on July 1, 2020 until January 30, 2020.

- (b) Adams County shall fund 50% of the VSO FTE position for one (1) year as a pilot program. This funding responsibility for Adams County is:
 - (i) 50% of the cost of the compensation package for the VSO's position
 - (ii) 50% of the cost of any conferences, training, and continuing education programs attended by the VSO during the one (1) year pilot program.

B) Arapahoe County

1) Veterans Service Officer

- (a) Arapahoe County shall fund 50% of one Adams County VSO FTE position for one (1) year as a pilot program. This funding responsibility of Arapahoe County to be paid to Adams County, through invoicing, is:
 - (i) 50% of the cost of the compensation package for the VSO's position
 - (ii) 50% of the cost of any conferences, training, and continuing education programs attended by the VSO during the one (1) year pilot program.
- (b) Arapahoe County shall ensure that the VSO has all necessary information that Arapahoe County can provide to perform its role for veteran residents of Arapahoe County, to include being trained by the current Arapahoe County veterans services officer currently located in the Littleton office. Arapahoe will provide employment supervision and other related matters.

2) Office Space

- (a) Arapahoe County will make office space available for the VSO in the judicial services area in the Arapahoe County building located at Colfax and Chambers – Alterra Plaza. The office space will include clerical support and reception.

C) City of Aurora

1) Veteran Services Officer

- (a) The City of Aurora shall be responsible for 100% of the cost of supplies reasonably needed by the Veterans Service Officer in performance of the Officer's duties during the one (1) year pilot program. Such supplies will include:
 - (i) Computer, screen, mouse, printer, chair, desk, file cabinet, phone (?)
 - (ii) A reasonable amount of office supplies such as pens, pencils, paper, staplers, etc.
- (b) The City of Aurora shall ensure that the VSO has all necessary information that the City can provide to perform its role for veteran residents of the City of Aurora.

II) TERM OF AGREEMENT

- A) This Agreement shall commence _____, 2020 at 12:01 a.m and shall terminated on _____, 2021 at 12:00 a.m or until earlier terminated as defined by this IGA.
- B) Any party may terminate this Agreement by giving prior written notice to the other parties not less than ninety (90) days before the effective date of termination, such notice shall be sent to the party's address and email address as listed below. The terminating party shall be responsible for its share of funding or supplies through the date of

termination.

III) PAYMENT AND PROVISION SCHEDULE

- A) Adams County shall provide invoices to Arapahoe County for the payment of compensation and training due under this Agreement.
- B) The City of Aurora will provide initial office supplies, to include the computer, screen, mouse, desk and chair, to Adams County for set up in the Adams County Office within thirty (30) days of the execution of this Agreement, and will provide the remainder of reasonable office supplies no later than one (1) week after the starting date of the Veteran Services Officer.
- C) The Veteran Services Officer shall submit request for office supplies to the City of Aurora no more than one (1) time/month. The City of Aurora will work diligently to process all requests and will raise any concerns with Adams County, as the employing agency.

IV) FUND AVAILABILITY

- A) The parties acknowledge that, as of the date of this IGA, each party has appropriated sufficient funds for this Agreement for the applicable fiscal year.
- B) The parties acknowledge that this Agreement and/or any extension of its original term shall be contingent upon annual funding being appropriated, budgeted, and otherwise made available for such purposes and subject to each party's satisfaction with the service received during the preceding term. Upon the agreement and with the consent of both Counties and the City, and if the parties appropriate additional money for each subsequent fiscal year, this Agreement may be extended for additional one year terms.
- C) Maximum Contract Expenditure. Any other provision of this Agreement notwithstanding and pursuant to C.R.S. § 29-1-110, the amount of funds appropriated for this Agreement by both Adams County and Arapahoe County, each respectively, is Thirty Thousand Dollars (\$ 30,000.00) for a total combined of Sixty Thousand (\$60,000.00) for the term of this agreement. Any potential expenditure for this Agreement outside the current fiscal year is subject to future annual appropriation of funds for any such proposed expenditure.
- D) In the event a party believes at any time that the amount remaining in the Agreement will be insufficient to cover its responsibilities under the terms of the Agreement for the remainder of the fiscal year, that party will immediately notify the other two parties of such concern. If a party cannot give adequate assurances to the other two parties that additional funds will be appropriated to cover the projected shortfall, any party can take whatever action it deems most appropriate, including terminating the Agreement.

V) MISCELLANEOUS

- A) Indemnification/Insurance. Each party shall be fully responsible for its own employee(s) consistent with all applicable laws. As stated above, the Veteran Services Officer shall be an employee of Adams County. Each party agrees to provide the other party written notice within sixty (60) days of the knowledge of any claim or controversy giving rise to a claim for indemnification as provided herein.

- B) Governmental Immunity. All activities performed under this Agreement are hereby declared to be governmental functions. The parties to this Agreement and their personnel complying with or reasonably attempting to comply with this Agreement or any ordinance, order, rule or regulation enacted or promulgated pursuant to the provisions of this Agreement shall be deemed to be operating within the scope of their duties and responsibilities and in furtherance of said governmental functions.
- C) No Waiver Under CGIA. Nothing in this Agreement shall be construed as a waiver by either party of the protections afforded them pursuant to the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S. (“CGIA”) as same may be amended from time to time. Specifically, neither party waives the monetary limitations, or any other rights, immunities or protections afforded by the CGIA or otherwise available at law.
- D) Insurance.
- 1) The City of Aurora, Arapahoe County and Adams County are all recognized as political subdivisions of the State of Colorado. As such they are governed by the Colorado Government Immunity Act.
 - 2) Each party to this Agreement shall procure and maintain their own insurance as they deem appropriate.
- E) Third Parties. This Agreement does not and shall not be deemed to confer upon any third party any right to claim damages to bring suit or other proceedings against either Arapahoe County or Douglas County because of any terms contained in this Agreement.
- F) Severability. In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included therein.
- G) Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement or understanding relating to the subject matter of this Agreement.
- H) Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.
- I) Survival. The rights and obligations of the parties shall survive the term of this Agreement to the extent that any performances is required under this Agreement after the expiration or termination of this Agreement.
- J) Notices. Notices to be provided under this Agreement shall be given in writing and either delivered via e-mail, by hand or deposited in the United States mail with sufficient postage to the addresses set forth herein:

ADAMS COUNTY
 County Manager’s Office
 4430 S. Adams County Parkway
 Brighton, Colorado 80601-8206
 areis@adcogov.org

Adams County Attorney’s Office
 4430 S. Adams County Parkway, Suite C5000B
 Brighton, Colorado 80601-8206
 hmiller@adcogov.org

ARAPAHOE COUNTY:

Board of County Commissioners of Arapahoe County
5334 South Prince Street
Littleton, Colorado 80120-1136
commissioners@arapahoe.gov

Arapahoe County Attorney
5334 South Prince Street
Littleton, Colorado 80120-1136
attorney@arapahoe.gov

CITY OF AURORA

City Manager's Office, 5th Floor
15151 E. Alameda Parkway
Aurora, Colorado 80012
jtwombly@auroragov.org

City Attorney's Office, 5th Floor
15151 E. Alameda Parkway
Aurora, Colorado 80012
dbrotzma@auroragov.org

- K) Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado without regard to the conflict of laws of such State.
- L) Good Faith. The parties agree to work together in good faith in performing their obligations hereunder.

(Signature page follows)

IN WITNESS WHEREOF, the parties have caused this Intergovernmental Agency Agreement to be executed by its duly authorized representatives as of the ____ day of _____, 2020.

CITY OF AURORA, COLORADO

Mike Coffman, Mayor

ATTEST:

Stephen J. Ruger, City Clerk

APPROVED AS TO FORM:



Aurora City Attorney's Office

BOARD OF COUNTY COMMISSIONERS,
ADAMS COUNTY, COLORADO

Chair

ATTEST:

Erica Hannah, County Clerk

APPROVED AS TO FORM:

Adams County Attorney's Office

BOARD OF COUNTY COMMISSIONERS,
ARAPAHOE COUNTY, COLORADO

Chair

ATTEST:

Clerk to the Board

APPROVED AS TO FORM:

Arapahoe County Attorney's Office



City of Aurora
COUNCIL AGENDA COMMENTARY

Item #: 10d
 SS: _____
 1st: _____
 2nd: _____

Item Title: Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, to Open an Independent Investigation into the Death of Elijah McClain
Item Initiator: Batchelor, Jason - Deputy City Manager - General Management
Staff Source: Batchelor, Jason - Deputy City Manager - General Management
City Manager/Deputy City Manager Signature: Colleen Lindstone
Outside Speaker:
Council Goal: 2012: 1.0--Assure a safe community for people

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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 City Council desires to authorize an independent review of the actions of the Aurora Police Department and Aurora Fire Rescue on August 24, 2019, involving Elijah McClain, who died three days later following the incident. The City Manager previously hired an outside investigator in February 2020 to conduct an independent review of the incident and whose review was slowed down due to the COVID crisis. City Council expressed concern that the selected outside investigator, who is an attorney with a prior career in law enforcement, did not meet the standard of neutrality that the City and community seeks. In response, the City Manager terminated his contract.

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

By this resolution, the City Council hereby directs the City Manager to engage independent consultants to conduct a comprehensive and thorough investigation into the incident with Elijah McClain that occurred on August 24, 2019, and his subsequent death.

QUESTIONS FOR Committee

Does Council approve this resolution?

LEGAL COMMENTS

City Council has the authority to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort and convenience of the city and its inhabitants. (City Code sec. 2-32). Council shall act only by ordinance, resolution or motion. (City Code sec. 5-1). (Rodgers)

PUBLIC FINANCIAL IMPACT *(If Yes, EXPLAIN)*

Yes No

No

PRIVATE FISCAL IMPACT *(If Significant or Nominal, EXPLAIN)*

Not Applicable Significant Nominal

N/A

EXHIBITS ATTACHED:

Resolution on Independent Investigation.pdf
071620 Independent Investigation PSCCS Minutes.pdf

RESOLUTION NO. R 2020-_____

A RESOLUTION BY THE CITY COUNCIL OF AURORA, COLORADO,
TO OPEN AN INDEPENDENT INVESTIGATION INTO THE DEATH OF
ELIJAH MCCLAIN

WHEREAS, the City Council desires to authorize an independent review of the actions of the Aurora Police Department and Aurora Fire Rescue on August 24, 2019, involving Elijah McClain, who died three days later following the incident; and

WHEREAS, Mr. McClain's death garnered significant local community concern when it happened, with many local citizens expressing anger about the incident and Mr. McClain's death at City Council meetings between September 2019 and into February 2020; and

WHEREAS, since Mr. McClain's death, there has been a criminal review of the matter by the 17th Judicial District Attorney's Office and an administrative review of the incident by both APD and AFR, all of which determined the actions by APD and AFR were lawful and within policy; and

WHEREAS, the City Manager previously hired an outside investigator in February 2020 to conduct an independent review of the incident and whose review was slowed down due to the COVID crisis; and

WHEREAS, as protest, unrest and calls for systematic change in policing increased following the in-custody death of George Floyd as the hands of police, the tragic death of Mr. McClain became international news with thousands of concerned citizens nation-wide and world-wide calling for an independent investigation; and

WHEREAS, City Council expressed concern that the selected outside investigator, who is an attorney with a prior career in law enforcement, did not meet the standard of neutrality that the City and community seeks, and, in response, the City Manager terminated his contract; and

WHEREAS, City Council believes a neutral third-party independent investigation conducted for the City is needed to discern the facts about what transpired that night of August 24, 2019; and

WHEREAS, City Council acknowledges the Governor's charge to the Colorado Attorney General to conduct a criminal investigation into this matter; and

WHEREAS, City Council acknowledges the Federal Bureau of Investigation's civil rights investigation into this matter; and

WHEREAS, City Council acknowledges that McClain family attorney has indicated that she is going to open an investigation into this matter; and

WHEREAS, the City’s independent investigation will not interfere with the other investigations being conducted, and the City is committed to cooperation on this important matter; and

WHEREAS, City Council believes time is of the essence and that the City Manager must move forward in an expeditious manner with regard to the independent investigation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The City Council hereby directs the City Manager to engage independent consultants to conduct a comprehensive and thorough investigation into the incident with Elijah McClain that occurred on August 24, 2019, and his subsequent death. This investigation must include a creation of a timeline; a review of all facts from the start to the end of APD’s and AFR’s contact with Mr. McClain; a review of relevant policies, procedures and practices including, without limitation, those related to calls for service, police contact with individuals, use of force, calls for medical assistance, ketamine use, and administrative incident reviews. The role of the City Manager in the investigation shall be limited to the procurement of the consultants and the administration of the contract(s), such as approval of invoices, and the provision of materials needed by the investigation team, such as audio and video records, files, and policies. No City official or employee will have control of the substance of the investigation or final report.

Section 2. The independent investigation team will be made up of at least three consultants who have expertise in independent critical incident investigations, law enforcement and public safety accountability, civil rights, police and EMT training and procedures, use of force, and/or criminal justice. The team will be led by Jonathan Smith of the Washington Lawyers Committee for Civil Rights and Urban Affairs, Washington D.C. In the event a consultant is not able to fulfill their duties, the City Manager may replace the consultant with another person with the requisite qualifications and shall inform City Council of such change.

Section 3. The independent investigation team is to commence its work immediately and shall complete its investigation as expeditiously as possible. Upon completion of its investigation, the investigation team shall submit a written report to City Council and the team, or Mr. Smith as lead, will present the findings of the investigation to the City Council in a public meeting. The report itself will be made public. The report should include recommendations for the City to address the situation that occurred, and recommendations based on best practices that should be employed by the City in the future. The written report should segregate any information required by law to be confidential from the main body of the report.

Section 4. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this _____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN RUGER, City Clerk

APPROVED AS TO FORM:



Nancy Rodgers, Deputy City Attorney

PUBLIC SAFETY, COURTS & CIVIL SERVICE MEETING
JULY 16, 2020

Members Present: Council Member Allison Hiltz, Chair
Council Member Curtis Gardner, Vice Chair
Council Member Angela Lawson, Member
Council Member Alison Coombs
Council Member Juan Marcano
Council Member Marsha Berzins

Others Present: J. Batchelor, A. Robnett, C. Hills, C. Andersen, D. Parker, D. Cooper, D. Giordano, D. Wilson, F. Gray, G. Begnaud, G. Koumantakis, H. Glidden, I. Evans, J. Bergeron, J. Twombly, J. Campbell, L. Condreay, M. Dudley, M. Longshore, M. Chapman, M. Fassio, M. Moore, S. Day, S. Wright, V. Wilson, W. Lippman, Z. DeBoyes

REVIEW/APPROVAL OF MINUTES

June minutes approved and signed.

ANNOUNCEMENTS

None.

CONSENT ITEMS

None.

INDEPENDENT INVESTIGATION UPDATE

Summary of Issue and Discussion

Council Member Hiltz advised that the committee has been in discussions with consultant, Jonathan Smith, about conducting a comprehensive and thorough investigation into the incident with Elijah McClain that occurred on August 24, 2019, and his subsequent death. Mr. Smith is the Executive Director of the Washington Lawyer's Committee for Civil Rights and Urban Affairs. Prior to his government services, Mr. Smith was the Executive Director of the Legal Aid Society of the District of Columbia, the Public Justice Center in Baltimore, Maryland, and the D.C. Prisoners' Legal Services Project.

CM Hiltz and City Manager Twombly are continuing to work together to establish the scope of the investigation and then move into discussions about recommendations. City Manager Twombly explained the scope they have been discussing includes investigating the actions of the police officers and fire fighter/paramedics on the scene August 24, 2019, that responded to a call about a suspicious person. The investigator will be asked to look at the actions of the police officers in response to the call, the subsequent investigation, and the internal force review of the incident; the actions of the Aurora Fire Rescue personnel on-scene; and the administration of ketamine with regard to all applicable laws, and best emergency medical protocols. The investigation should be conducted in light of the APD and AFR policies, directives, procedures, practices, and training. Evaluations will be conducted with respect to applicable laws, best practices, national policing, and emergency response standards. And recommendations provided with regard to APD and AFR policies, directives, procedures, practices, and training.

CM Lawson asked for clarification on the scope and if it is focused on just the incident involving Elijah McClain. CM Hiltz confirmed this investigation will be specifically looking into the incident involving Elijah McClain but conversations around more holistic issues with the department are taking place. CM Lawson asked if a timeframe to complete the investigation is included. CM Hiltz noted that the request is to have the investigation and report done as quickly as possible. Part of the scope of work will be developed with the consultant hired to do the investigation. Coordination will also need to be done with the Attorney General's Office to make sure they are working in tandem. City Manager Twombly can provide CM Lawson with the scope of work.

CM Hiltz explained that she and CM Gardner had a conversation with Mr. Smith approximately two weeks ago and discussed the goals of the investigation, his experience, and got information in terms of what they would like to see with regard to working with the AG's office and potential obstacles they might face. They are still looking for someone with medical experience with regard to the ketamine aspect. They have found potential issues with conflict of interest and want to bring someone on that is not local. They hope to have a name by the end of the week to be brought forward to full council. CM Lawson supports moving this forward to full council but expressed concern that the other committee members were having conversations and had information that she did not have or was not included in. CM Hiltz explained she had requested that the full committee be included in the meeting that was held with Mr. Smith and will look in to the circumstances of her not being invited.

Outcome

Move forward to full council.

Follow-up Action

None.



City of Aurora

COUNCIL AGENDA COMMENTARY

Item #: 10e
SS: _____
1st: _____
2nd: _____

Item Title: Consideration to APPROVE A RESOLUTION of the City Council of the City of Aurora, Colorado, to renew the City Manager’s Disaster Declaration
Item Initiator: Twombly, James - City Manager - General Management
Staff Source: Twombly, James - City Manager - General Management
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 1.0--Assure a safe community for people

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

- Approve Item as proposed at Study Session Approve Item with Waiver of Reconsideration
 Approve Item and Move Forward to Regular Meeting
 Approve Item as proposed at Regular Meeting Information Only

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 July 10, 2020, the Tri-County Health Department issued an order mandating that individuals wear face coverings whenever they are outside their residence and unable to maintain, or where not maintaining, a social distance of six feet from any non-household member or members. This order will take effect on July 24, 2020. Additionally, on July 16, 2020, the Governor of the State of Colorado issued an Executive Order mandating that persons over the age of 10 in Colorado wear facial coverings in public indoor spaces.

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

Currently, the Aurora Police Department would have the authority to enforce the public health order and the Executive Order under state law. However, if the City wanted to delegate enforcement authority to other City departments and issue citations into the municipal court, the City Manager would need to issue a regulation setting forth such delegations as an exercise of his disaster authority provided for in City Code 38-33. This would require a new disaster declaration. This situation and ongoing issuance of Executive Orders and public health orders at the state and Tri-County level have highlighted the need for a new disaster declaration. Since ending the first disaster declaration on June 1, 2020, the Governor has issued 46 new Executive Orders due to the presence of COVID-19 in Colorado. Additionally, Tri-County Health Department has issued its public health order on face coverings and CDPHE has issued a public health order implementing the Governor’s Protect Our Neighbors Executive Order. A second Disaster Declaration for Aurora would allow the City to quickly implement necessary policies to address regulatory changes, directives, or licensing restrictions contained in the Executive Orders or public health orders. Included in your materials is the second Disaster Declaration along with the implementing Resolution for Council’s consideration at the formal Council Meeting on 7/20/2020.

QUESTIONS FOR Committee

LEGAL COMMENTS

Council shall act only by ordinance, resolution or motion. (City Charter Sec. 5-1). No state of disaster may continue for longer than seven days unless renewed by the consent of the majority of the city council. (City Code Sec. 38-33(b)) (Evans)

PUBLIC FINANCIAL IMPACT *(If Yes, EXPLAIN)*

Yes No

No

PRIVATE FISCAL IMPACT *(If Significant or Nominal, EXPLAIN)*

Not Applicable Significant Nominal

N/A

EXHIBITS ATTACHED:

COVID 20-02 Disaster Declaration Resolution.docx
COVID 20-02 Disaster Declaration.docx
Regulation Adopting State Mask Order.docx

RESOLUTION NO. R 2020-_____

A RESOLUTION BY THE CITY COUNCIL OF AURORA, COLORADO, TO
RENEW THE CITY MANAGER'S DISASTER DECLARATION

WHEREAS, the City Code of the City of Aurora, Section 38-33 gives the City Manager the authority to declare that a state of disaster exists when a disaster has occurred or the threat of disaster is imminent; and

WHEREAS, the state of disaster shall continue until the City Manager finds that the threat of danger has passed or the disaster has been dealt with to the extent that disaster conditions no longer exist; and

WHEREAS, no state of disaster may continue for longer than seven days unless renewed by the consent of the majority of the City Council; and

WHEREAS, the City of Aurora, Colorado is experiencing serious emergency conditions as a result of the outbreak of COVID-19, causing a public health incident; and

WHEREAS, on March 10, 2020, Governor Polis declared a state of epidemic disaster emergency in Colorado; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak to be a pandemic; and

WHEREAS, on March 13, 2020, President Trump issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency; and

WHEREAS, on March 13, 2020, the City of Aurora declared a local state of emergency due to the outbreak of COVID-19; and

WHEREAS, on March 18, 2020, the City of Aurora declared a local state of disaster due to the outbreak of COVID-19; and

WHEREAS, On June 1, 2020, the City Council of the City of Aurora voted to end the local state of disaster; and

WHEREAS, on June 2, 2020, the City Manager of the City of Aurora issue a proclamation ending the local state of disaster, effective as of June 1, 2020; and

WHEREAS, this public health incident has required a change in operations and policy for the City of Aurora in order to respond to the public health incident; and

WHEREAS, the Governor of the State of Colorado has issued multiple Executive Orders since June 1, 2020, and will continue to do so during the duration of the COVID-19 public health incident; and

WHEREAS, the Tri-County Health Department has issued new public health orders during the duration of the COVID-19 public health incident; and

WHEREAS, on July 16, 2020, the Governor of the State of Colorado issued Executive Order D 2020-138 ordering individuals in Colorado to wear non-medical face coverings; and

WHEREAS, the regulation process created by City Code of the City of Aurora, Section 38-33 will enable the City to quickly implement necessary policies to address the State Executive Orders, public health orders, and the COVID-19 public health incident; and

WHEREAS, the City of Aurora City Manager declared a local state of disaster on July ____, 2020; and

WHEREAS, the City Council finds and declares that a state of disaster is necessary for the preservation and protection of the public health, safety, and welfare of the inhabitants of the City of Aurora, Colorado.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Disaster Declaration signed by the City Manager on July ____, 2020, is hereby renewed by the City Council. This Disaster Declaration shall remain in place until the City Council terminates the Declaration by motion, whereupon the City Manager shall issue a proclamation ending the state of disaster.

Section 2. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.


RESOLVED AND PASSED this ____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN RUGER, City Clerk

APPROVED AS TO FORM:



Isabelle Evans, Assistant City Attorney

Disaster Declaration 20-02

WHEREAS, the City Code of the City of Aurora, Section 38-33 gives the City Manager the authority to declare that a state of disaster exists when a disaster has occurred or the threat of disaster is imminent; and

WHEREAS, the state of disaster shall continue until the City Manager finds that the threat of danger has passed or the disaster has been dealt with to the extent that disaster conditions no longer exist; and

WHEREAS, no state of disaster may continue for longer than seven days unless renewed by the consent of the majority of the City Council; and

WHEREAS, the City of Aurora, Colorado is experiencing serious emergency conditions as a result of the outbreak of COVID-19, causing a public health incident; and

WHEREAS, on March 10, 2020, Governor Polis declared a state of epidemic disaster emergency in Colorado; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak to be a pandemic; and

WHEREAS, on March 13, 2020, President Trump issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency; and

WHEREAS, on March 13, 2020, the City of Aurora declared a local state of emergency due to the outbreak of COVID-19; and

WHEREAS, on March 18, 2020, the City of Aurora declared a local state of disaster due to the outbreak of COVID-19; and

WHEREAS, on June 1, 2020, the City Council of the City of Aurora voted to end the local state of disaster; and

WHEREAS, on June 2, 2020, the City Manager of the City of Aurora issued a proclamation ending the local state of disaster, effective as of June 1, 2020; and

WHEREAS, the Governor of the State of Colorado has issued multiple Executive Orders since June 1, 2020, and will continue to do so during the duration of the COVID-19 public health incident; and

WHEREAS, the Tri-County Health Department has issued new public health orders during the duration of the COVID-19 public health incident; and

WHEREAS, on July 16, 2020, the Governor of the State of Colorado issued Executive Order D 2020-138 ordering individuals in Colorado to wear non-medical face coverings; and

WHEREAS, the regulation process created by the City Code of the City of Aurora, Section 38-33 will enable the City to quickly implement necessary policies to address the State Executive Orders, public health orders, and the COVID-19 public health incident; and

WHEREAS, the City Manager of the City of Aurora, Colorado hereby finds, determines, and declares a Proclamation of a State of Disaster is necessary for the preservation and protection of the public health, safety, and welfare of the inhabitants of the City of Aurora, Colorado; and

WHEREAS, this declaration of disaster shall remain in effect until the City Manager finds that the threat of danger has passed or the disaster has been dealt with to the extent that disaster conditions no longer exist or for seven days, unless and until such declaration is renewed by the consent of the majority of the City Council.

NOW THEREFORE, I proclaim there to be State of Disaster.

Dated this ____ day of July, 2020.

Jim Twombly, City Manager
City of Aurora, Colorado

Approved as to form:



**NOTICE OF CITY OF AURORA REGULATION PURSUANT TO AURORA
MUNICIPAL CODE ORDINANCE 38-33(d)**

Regulation 20-06

On July ____, 2020, the City of Aurora declared a state of disaster due to the public health incident related to COVID-19 in order to preserve and protect the public health, safety, and welfare of the inhabitants of the City. Under Aurora Municipal Ordinance 38-33(d), during a declared state of disaster, the City Manager may promulgate regulations necessary to protect life and property and preserve critical resources. At this time, the City Manager has determined that an exercise of that authority is necessary to protect the citizens of the City of Aurora and to facilitate statewide efforts to stop the spread of COVID-19. Therefore, the following regulations are hereby adopted:

1. The City of Aurora hereby adopts the restrictions promulgated by State Executive Order D 2020-138, dated July 16, 2020 (“State Facial Coverings Order”) as it may be amended from time to time.
2. The City Manager hereby delegates enforcement authority for violations of the State Facial Coverings Order to the Director of Housing and Community Services; the Director of Parks, Recreation, and Open Space; and the Director of Finance. Such Directors may delegate enforcement duties to personnel within their respective Departments.
3. This regulation shall remain in place so long as the State Facial Coverings Order remains in place, or until the City Manager determines that such regulation is no longer necessary to protect life and property in the City of Aurora.

Dated this ____ day of July, 2020.

Jim Twombly, City Manager

City of Aurora, Colorado



**City of Aurora
COUNCIL AGENDA COMMENTARY**

Item #: 11a
 SS: _____
 1st: _____
 2nd: _____

Item Title: Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, authorizing the Imposition of Capital Impact Fees on residential development in the City as approved by the Uniform Development Ordinance.
Item Initiator: Velasquez, Terri - Director Of Finance - Finance
Staff Source: Velasquez, Terri - Director Of Finance - Finance
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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.)*

In 2018, Council directed staff to evaluate updating the Capital Impact Fees, and contracted with Economic & Planning Systems (EPS) to complete this work. EPS met with key staff from the affected departments and prepared working draft fees. This study and the 2008 study used the "Incremental Expansion" method. This technique estimates the cost that needs to be recouped by each new unit of development in order for the City to maintain its current level of service. A version of this information was first seen at the February 4 study session and again at the March 4th, March 25th, and April 8th study sessions. This information was also discussed at the March 7 City/Development Community Joint Task Force and on April 2 with members of the HBA. The information was then discussed at the April 27 Spring Workshop, where final decisions were made. On May 8, 2019, the Planning Commission unanimously approved an affirmation to Council regarding the Impact Fees. On May 20, 2019 an ordinance was introduced to approve the Impact Fees and was finalized on June 3, 2019.

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

Per the May 20, 2019 Council agenda item, the Capital Impact Fees were approved with no phase in for Police and Fire and a three year phase for fees that are General Government, Parks, Recreation, and Libraries. And the previously approved indexing would still occur annually in addition to the phasing. However, the ordinance that was approved in 2019 did not clearly outline the annual indexing for the Phased Fees. The ordinance that is submitted with this agenda item clarifies the indexing annually for the Capital Impact Fees and corrects the 2019 ordinance. All Capital Impact Fees that were discussed with City Council remain in place.

QUESTIONS FOR Committee

Does City Council support the proposed ordinance amending the Capital Impact Fee indexing for the phased fees?

LEGAL COMMENTS

The city may impose, as a condition for the issuance of a development permit, an impact fee to fund the City’s expenditures on capital facilities needed to serve the new development in compliance with Section 29-20-104.5 C.R.S. No impact fee shall be imposed unless it is imposed pursuant to a schedule legislatively adopted, generally applicable to a broad class of property and intended to defray the projected impacts on capital facilities caused by the proposed new development. Id. City Code Sec. 146.5.3.17 (Uniform Development Code) also authorizes City Council to impose Capital Impact Fees. This Ordinance is in compliance with both legislative enactments. (Hernandez)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

Indexing of the Capital Impact Fees adjusts the fees for inflation.

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

N/A

EXHIBITS ATTACHED:

2020-Capital-Impact-Fees-Amendment.pdf

ORDINANCE NO. 2020-_____

A BILL

FOR AN ORDINANCE AUTHORIZING THE IMPOSITION OF CAPITAL IMPACT FEES ON RESIDENTIAL DEVELOPMENT IN THE CITY AS APPROVED BY THE UNIFORM DEVELOPMENT ORDINANCE

WHEREAS, the City of Aurora (the “City”) approved through Ordinance 2019 49 a new Uniform Development Ordinance (“UDO”) that became effective on September 21, 2019; and

WHEREAS, prior to the UDO being approved the City approved the imposition of capital impact fees on residential development; and

WHEREAS, the UDO repealed and replaced the existing zoning code and consequently it repealed the section containing the prior approved capital impact fees and the reenactment did not included the capital impact fees; and

WHEREAS, the UDO in Section 146-5.3.17 authorizes the City to approve capital impact fees and the City believes that it is necessary and proper to approve the capital impact fees included in this ordinance to avoid confusion and delay in the imposition and management of these fees.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. As authorized by Section 146-5.3.17 of the City Code of the City of Aurora, Colorado, the following capital impact fees are hereby imposed on residential development:

- a) Commencing January 1, 2020, and as a condition of issuing a building permit for any new dwelling in the city, the following capital impact fees shall be levied and assessed on a per-unit basis for the purpose of defraying the projected impacts on capital facilities of the city caused by proposed development:

Beginning January 1, 2020, the fees prior to being adjusted for inflation are as follows:

CAPITAL IMPACT FEE PER DWELLING UNIT	SINGLE-FAMILY DETACHED DWELLINGS	SINGLE-FAMILY ATTACHED	MULTIFAMILY
TRANSPORTATION AND PUBLIC WORKS	\$612.00	\$518.00	\$431.00

POLICE	\$972.42	\$711.84	\$702.30
FIRE	\$928.81	\$679.91	\$670.81
LARGE URBAN, SPECIAL USE, AND REGIONAL PARKS	\$629.51	\$483.84	\$451.01
GENERAL GOVERNMENT/ FACILITIES	\$531.89	\$409.34	\$380.33
RECREATION	\$371.66	\$272.06	\$268.42
LIBRARIES	\$89.73	\$65.68	\$64.80
TOTAL	\$4,136.02	\$3,140.67	\$2,968.67

Beginning January 1, 2021, the fees prior to being adjusted for inflation are as follows:

CAPITAL IMPACT FEE PER DWELLING UNIT	SINGLE- FAMILY DETACHED DWELLINGS	SINGLE- FAMILY ATTACHED	MULTIFAMILY
TRANSPORTATION AND PUBLIC WORKS	\$612.00	\$518.00	\$431.00
POLICE	\$972.42	\$711.84	\$702.30
FIRE	\$928.81	\$679.91	\$670.81
LARGE URBAN, SPECIAL USE, AND REGIONAL PARKS	\$951.01	\$707.68	\$685.03
GENERAL GOVERNMENT/ FACILITIES	\$828.77	\$616.67	\$596.65

RECREATION	\$743.32	\$544.13	\$536.84
LIBRARIES	\$179.45	\$131.36	\$129.61
TOTAL	\$5,215.78	\$3,909.59	\$3,752.24

Beginning January 1, 2022, the fees prior to being adjusted for inflation are as follows:

CAPITAL IMPACT FEE PER DWELLING UNIT	SINGLE-FAMILY DETACHED DWELLINGS	SINGLE-FAMILY ATTACHED	MULTIFAMILY
TRANSPORTATION AND PUBLIC WORKS	\$612.00	\$518.00	\$431.00
POLICE	\$972.42	\$711.84	\$702.30
FIRE	\$928.81	\$679.91	\$670.81
LARGE URBAN, SPECIAL USE, AND REGIONAL PARKS	\$1,272.52	\$931.52	\$919.04
GENERAL GOVERNMENT/ FACILITIES	\$1,125.66	\$824.01	\$812.98
RECREATION	\$1,114.98	\$816.19	\$805.26
LIBRARIES	\$269.18	\$197.04	\$194.41
TOTAL	\$6,295.57	\$4,678.51	\$4,535.80

b) *Inflation.* Commencing in 2020, on January 1 of each year, the capital impact fees levied and assessed pursuant to subsection (a) shall be adjusted for inflation in accordance with the following indices:

1. Transportation: The Colorado Construction Cost Index published by the Colorado Department of Transportation.
2. Police: The Denver Building Cost Index published by the Engineering News Record.
3. Fire: 41.9% of the total index based on the Denver-Boulder-Greeley Consumer Price Index for all urban consumers and 58.1% of the total index based on the Denver Building Cost Index published by the Engineering News Record.
4. Large urban and special use parks: The Denver Construction Cost Index published by the Engineering News Record.
5. General Government: The Denver Building Cost Index published by the Engineering News Record.
6. Recreation: The Denver Building Cost Index published by the Engineering News Record.
7. Libraries: The Denver Building Cost Index published by the Engineering News Record.

Adjusted capital impact fees shall be established annually by the finance director in accordance with the provisions of Section 2-587 of this Code.

c) *Administration.* The City finance director is authorized to establish the amount of the residential capital impact fee annually, based on the base fee amounts and inflation factors most recently approved by City Council. The city manager is hereby authorized to adopt rules and regulations regarding the administration and application of the fees established by Section 146-5.3.17 of the UDO and as authorized in this ordinance.

Section 2. In the event that the Engineering News Record ceases to be published, the City Manager is hereby authorized to select a substitute publication containing similar data for the purpose of defining inflation as set forth in subsection b) of this ordinance.

Section 3. That, 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.

Section 4. This Ordinance shall remain in effect until formally repealed by City Council, and all ordinances or parts of ordinances of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of _____, 2020.

PASSED AND ORDERED PUBLISHED BY REFERENCE this _____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:



HANOSKY HERNANDEZ,
Assistant City Attorney

ORDINANCE NO. 2020-____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 26 BY CREATING A “NON-SUGARY DEFAULT BEVERAGE OPTION ON CHILDREN’S MENUS” UNDER ARTICLE IX OF THE CITY CODE

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City wishes to exercise its regulatory powers under the home rule authority granted by the Colorado Constitution, recognizing that the City Council (the “Council”) supports the health and welfare of all residents of Aurora with special regard to children; and

WHEREAS, through Resolution No. R2013-55 of the Council and in partnership with the LiveWell Colorado HEAL Cities and Towns Initiative, the City has affirmed its commitment to encouraging healthy opportunities and choices for members of our community; and

WHEREAS, considering statistics and health studies showing that increasing the sugar intake leads to multiple health issues affecting the quality of life of residents and especially children and that Council supports reasonable measures that increase the health and wellness of the residents and visitors of Aurora; and

WHEREAS, sugary drinks are the single leading source of added sugars in the American diet and nearly 50 percent of 2- to 5-year-olds have at least one sugary drink daily, and medical evidence suggests children who drink at least one sugary drink per day are 55 percent more likely to experience overweight or obesity; and children experiencing obesity are at increased risk for health conditions including type 2 diabetes, heart disease, stroke, high blood pressure, cancer, asthma, and depression; and

WHEREAS, diversity enriches Aurora, the 3rd largest and most diverse city in Colorado, with 29% Hispanic or Latino residents, 16% Black or African American residents, 20% foreign-born residents, and over 30% of Aurorans who speak a language other than English at home; and

WHEREAS, Black and Latino Americans disproportionately experience high rates of obesity and chronic diseases as compared to their White counterparts, and in Colorado, 15 % of children consume one or more sugary drinks per day while 23% of Black children do and 18 % of Latino children do; and

WHEREAS, to protect the health and well-being of all children and families within the City, including those most impacted by adverse health conditions and diseases, Council has decided to create a new default drink requirement for all food establishments in the City offering a children's meal.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO THAT:

Section 1. Chapter 26, Article IX, of the City Code of the City of Aurora, Colorado, is hereby amended to add an additional section to read as follows:

Article IX. Children default beverage option.

Section 26-441. Definitions

Except as otherwise indicated by the context, the following words, terms and phrases, shall have the following meanings for purposed of this Article:

Children's meal means a food or bundle of food items listed on a menu or menu board and intended for consumption by children. It shall be a rebuttable presumption that a children's meal is offered if the food items are offered with a toy or kid's game; alongside a cartoon illustration or puzzle; or alongside any of the following words: "child", "children", "kids", "junior", "kiddie", "kiddo" or any combination of such or any other wording that clearly indicates to a reasonable person that the food item is intended for children.

Employee means any person who performs any service at a food establishment on a full-time, part-time, or contract basis. Employee does not include a person exclusively engaged in the repair or maintenance of the food establishment, or physically present for the delivery of goods to the food establishment.

Person shall have the meaning as defined in Section 86-26.

Food establishment means any establishment licensed for the sale of food service, for immediate consumption.

Section 26- 442. Default beverage option.

- (a) On and after 07/01/2020 a food establishment that sells a children's meal that includes a beverage in the price of the meal shall make the default beverage sold with said children's meal one of the following items:

- 1) Water, still or sparkling, with no added natural or artificial sweeteners; or
- 2) Dairy milk or milk substitute with no added natural or artificial sweeteners.

(b) Nothing in this section prohibits a food establishment or any employee of the food establishment to sell, or the customer's ability to purchase, any other beverage that is available per request outside the default beverage.

Section 26-443. Complaints.

- (a) Any person may lodge a complaint with the Finance Director or designee for any violations of this Article. Upon receiving a complaint of non-compliance with this Article the Finance Director or designee shall verify the complaint and after verification shall notify in writing the food establishment of the violation and advise the food establishment that the violation has to be corrected within sixty days (60) to comply with this Article. The food establishment may satisfy compliance by sending a copy or a picture of the corrected menu.

Section 26-444. Cooperation with Tri-County Health Department.

The City Manager is authorized to enter into any agreements with the Tri-County Health Department to assist in the implementation of the regulations contained in this Article IX.

Section 2. All ordinances, or parts of ordinances, of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 3. That, notwithstanding any provision of the Charter or the City Code of the City of Aurora, Colorado, to the contrary, this ordinance shall take effect on January 1, 2020.

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 _____, 2020.

PASSED AND ORDERED PUBLISHED BY REFERENCE this ____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM



HANOSKY HERNANDEZ,
Assistant City Attorney



**City of Aurora
COUNCIL AGENDA COMMENTARY**

Item #: 13a
 SS: _____
 1st: _____
 2nd: _____

Item Title: Public Hearing and Consideration of A RESOLUTION of the City Council of the City of Aurora, Colorado, making certain findings of fact regarding the proposed annexation of a parcel of land located in the Northeast Quarter of Section 11, Township 4 South, Range 66 West of the Sixth Principal Meridian, Arapahoe County, Colorado. (Colorado Christian Fellowship Annexation 9.2 acres)
Item Initiator: Cox, Jacob - Senior Dev Project Manager - General Management
Staff Source: Cox, Jacob - Senior Dev Project Manager - General Management
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 5.0--Be a great place to locate, expand and operate a business and provide for well-planned growth and development

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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.)*

A petition for annexation was filed with the City Clerk for annexation of a 9.2 acre parcel owned by Colorado Christian Fellowship. This parcel is located at the southwest corner of Stephen D. Hogan Parkway and Picadilly Road (see attached vicinity map).

City Council made a finding of substantial compliance regarding this annexation on June 1st, 2020.

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

The parcel falls within the City's Annexation Boundary and meets contiguity requirements. There are no proposed development plans at this time in conjunction with this annexation request.

The initial zoning ordinance will be presented to City Council at the next meeting following the Annexation ordinance. Please note that the public hearing for the Initial Zoning will occur on August 3rd, 2020. The initial zoning follows the City's Comprehensive Plan and will be zoned Mixed Use Corridor (MU-C). The MU-C district is intended to enable sustainable development of new medium-scale mixed-use centers.

The annexation process follows state law, and this annexation will be considered over three City Council meetings. Consideration of this resolution is part of item #2 listed below:

1. At the June 1, 2020 meeting, City Council approved a Resolution making a finding that the annexation petition is in substantial compliance with statutory requirements. The City also set the hearing date.
2. City Council conducts the Public Hearing, considers approval of a Resolution making a finding that the land is eligible for annexation, and considers Introduction of the Annexation Ordinance.
3. City Council considers the Annexation Ordinance on final reading and the Annexation Agreement will be presented for Council consideration.

QUESTIONS FOR Committee

Does City Council wish to approve this Resolution?

LEGAL COMMENTS

Upon completion of the public hearing, City Council shall set forth its findings of fact and conclusions by resolution with reference to the following matters:

- 1) That not less than one-sixth of the perimeter of area proposed to be annexed is contiguous with the City. That the contiguity was not established by use of any boundary of an area which was previously annexed to the City, which at the time of its annexation, was not contiguous at any point with the boundary of the City, was not otherwise in compliance with the annexation statutes, and was located more than three miles from the nearest boundary of the City;
- 2) That a community of interest exists between the area proposed to be annexed and the City, and that the area is urban or will be urbanized in the near future and that it is capable of being integrated with the City. (This is presumed with required contiguity, but may be rebutted.);
- 3) That no tract of land held in identical ownership has been divided without the owner's consent, and that no land held in identical ownership, comprising 20 acres or more, is included without the consent of the owner;
- 4) That no annexation proceedings have been commenced to annex the area to another municipality; that the annexation will not result in the detachment of area from any school district;
- 5) That the annexation will not have the effect of extending the City boundary more than 3 miles in any one year;
- 6) That the City has a plan in place for the area;
- 7) That, if a portion of a platted street or alley is annexed, not less than the entire width of said street or alley shall be included in the area annexed;
- 8) That no annexation election has been petitioned;
- 9) That no additional terms or conditions are to be imposed upon the area to be annexed.

Sections 31-12-104 and 31-12-105, Colorado Revised Statutes.

(Rulla)

PUBLIC FINANCIAL IMPACT *(If Yes, EXPLAIN)*

Yes No

Annexation obligates the City to provide municipal services and utilities upon development. The fiscal impact of this development will be offset by various development fees paid at time of development, as well as future taxes generated by the expected development of commercial uses on this property.

PRIVATE FISCAL IMPACT *(If Significant or Nominal, EXPLAIN)*

Not Applicable Significant Nominal

Annexation and connection to the City's utility system will permit the property to develop more efficiently than would be possible in Arapahoe County.

EXHIBITS ATTACHED:

1. Colorado Christian Fellowship Annexation Finding of Fact Resolution -3-3.pdf
Colorado Christian Fellowship Annexation - Plat Map.pdf
Colorado Christian Fellowship Annexation - Vicinity Map.pdf

RESOLUTION NO. R2020- ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, MAKING CERTAIN FINDINGS OF FACT REGARDING THE PROPOSED ANNEXATION OF A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO (Colorado Christian Fellowship) 9.2122 ACRES

WHEREAS, the City Council of the City of Aurora, Colorado, has found a petition for annexation of the hereinafter described parcel of land to be in substantial compliance with the requirements of Section 31-12-107(1), Colorado Revised Statutes; and

WHEREAS, the City Clerk has provided notice of public hearing on the proposed annexation by publication once a week for four consecutive weeks and by registered mail to the Clerk of the Board of County Commissioners, the County Attorney, the school district, and to any special district having territory in the area to be annexed; and

WHEREAS, the City Council has completed a public hearing to determine if the proposed annexation complies with Sections 31-12-104 and 31-12-105, Colorado Revised Statutes, to establish eligibility for annexation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That the City Council of the City of Aurora, Colorado, hereby finds and concludes with regard to the annexation of the territory described in Exhibit A, attached hereto and incorporated herein, that not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the existing boundaries of the City of Aurora, Colorado; and therefore, because of such contiguity, a community of interest exists between the territory proposed to be annexed and the City of Aurora; that the territory to be annexed is urban or will be urbanized in the near future; and that the territory proposed to be annexed is integrated or is capable of being integrated with the City of Aurora, Colorado.

Section 2. That the City Council finds and determines that no land held in identical ownership has been divided or included without written consent of the owner thereof; that no annexation proceedings have been commenced by another municipality; that the annexation will not result in the detachment of the area from a school district; that the annexation will not result in the extension of a municipal boundary more than three miles; that the City of Aurora has in place a plan for the area; and that in establishing the boundaries of the area to be annexed, the entire width of any street or alley is included within the area annexed.

Section 3. That an election is not required, and no additional terms or conditions are to be imposed upon the area to be annexed.


RESOLVED AND PASSED this _____, day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:



BRIAN J. RULLA, Assistant City Attorney

Exhibit A
(Legal description of property to be annexed)

A PARCEL OF LAND LYING IN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11;

THENCE SOUTHERLY ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 270.00 FEET;

THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF $90^{\circ}14'39''$ AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING, SAID POINT LYING ON THE WEST RIGHT-OF-WAY LINE OF PICADILLY ROAD;

THENCE CONTINUING ALONG THE LAST DESCRIBED COURSE A DISTANCE OF 417.70 FEET;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF $90^{\circ}14'39''$ AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 945.61 FEET;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF $89^{\circ}45'21''$ AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 417.70 FEET TO A POINT LYING ON SAID WEST RIGHT-OF-WAY LINE;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF $90^{\circ}14'39''$ AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 AND ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 107.09 FEET;

THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF $90^{\circ}00'00''$ A DISTANCE OF 30.00 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF $90^{\circ}00'00''$ ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION SAID SECTION 11 A DISTANCE OF 210.20 FEET;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF $90^{\circ}00'00''$ A DISTANCE OF 30.00 FEET TO SAID WEST RIGHT-OF-WAY LINE;

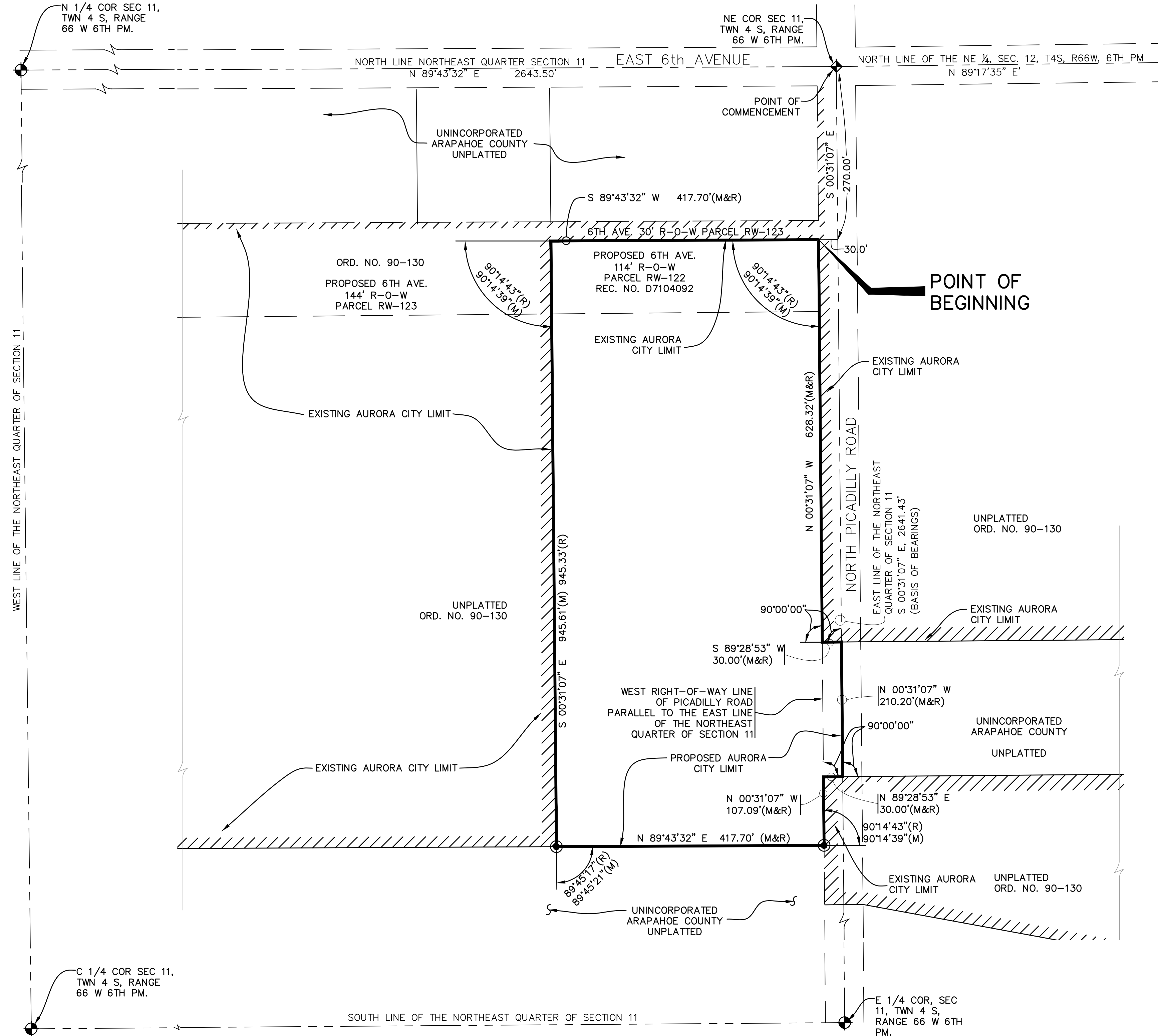
THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF $90^{\circ}00'00''$ AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 AND

ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 628.32 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 401,284 SQ. FT. (9.2122 ACRES) MORE OR LESS.

ANNEXATION MAP

A PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO



LEGEND

- EXISTING AURORA CITY LIMITS
- PROPOSED AURORA CITY LIMITS
- (M) MEASURED DISTANCE OR ANGLE PER FIELD SURVEY 01/23/2019
- (R) RECORD DISTANCE OR ANGLE PER WARRANTY DEED B8073665
- SECTION LINE
- PROPERTY LINE
- RIGHT-OF-WAY LINE
- ◆ SECTION CORNER
- ⊕ QUARTER SECTION CORNER
- FOUND NO. 5 REBAR WITH CAP LABELED V3 38145

NOTES:

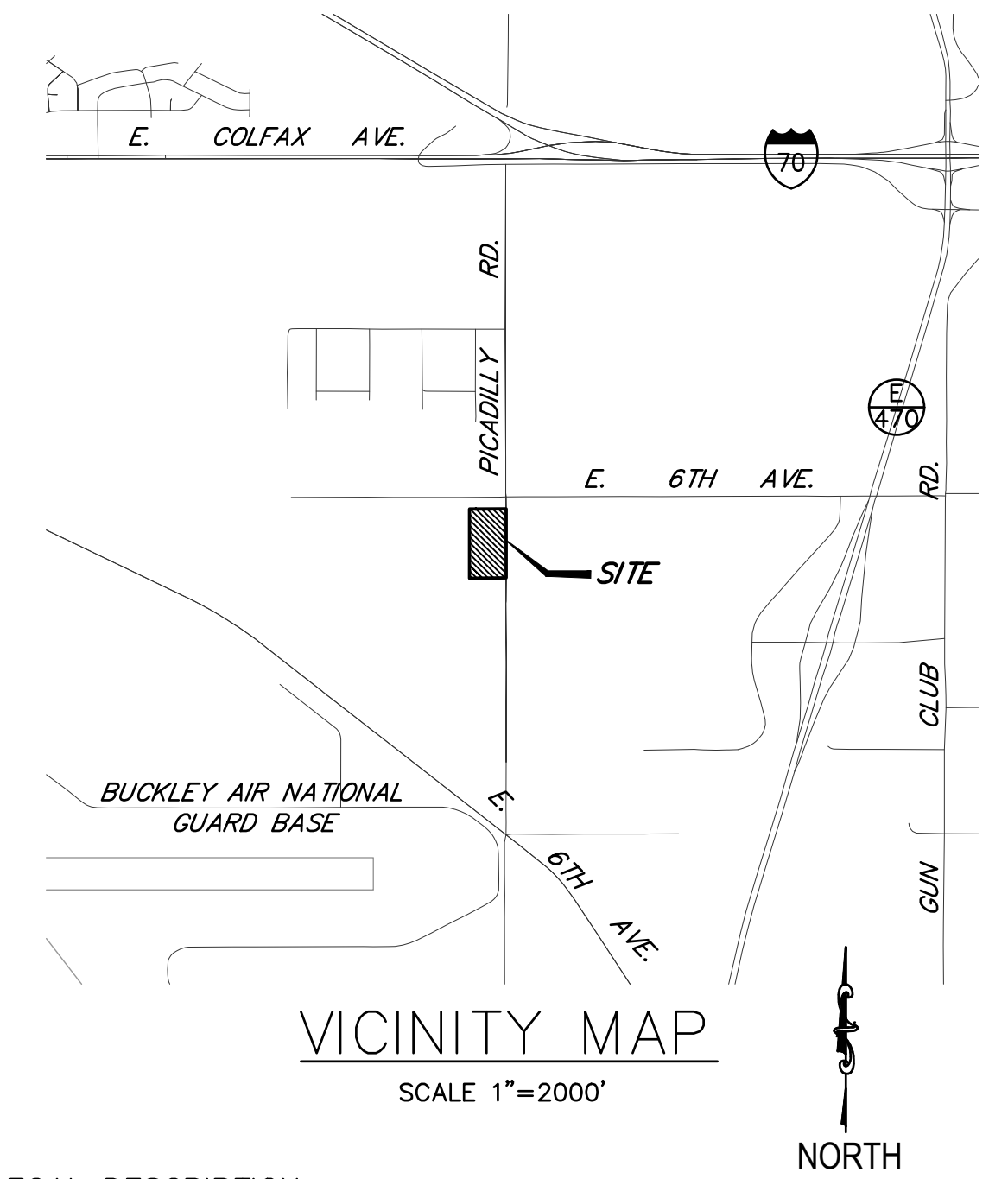
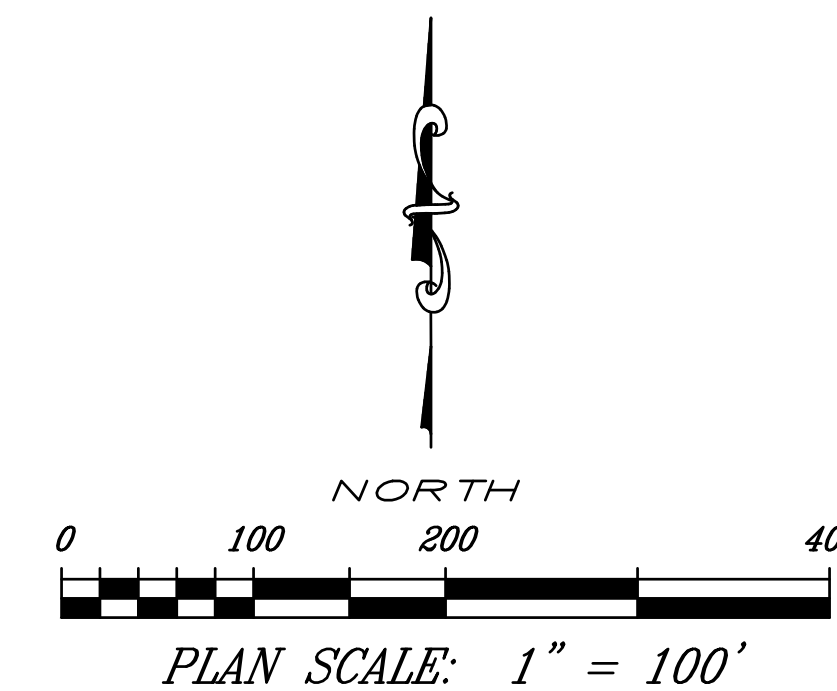
- ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
- ALL DIMENSIONS SHOWN HEREON ARE IN US SURVEY FEET, ALL ANGLES SHOWN HEREON ARE IN DEGREES-MINUTES-SECONDS.

SURVEYOR'S CERTIFICATE

I, JAMES V. HASTINGS, A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF COLORADO DO HEREBY CERTIFY THAT NOT LESS THAN ONE-SIXTH (1/6) OF THE PERIMETER OF THE AREA PROPOSED TO BE ANNEXED TO THE CITY OF AURORA, COLORADO IS CONTIGUOUS WITH THE BOUNDARIES OF THE ANNEXING MUNICIPALITY, AND THAT THIS ANNEXATION PLAT SUBSTANTIALLY COMPLIES WITH THE COLORADO REVISED STATUTES AND THE CITY OF AURORA, COLORADO CODES APPERTAINING THERETO.

JAMES V. HASTINGS P.L.S. #22917

TOTAL PERIMETER	2,786.62 FT
CONTIGUOUS PERIMETER	2,158.72 FT
TOTAL AREA	401,287 SF



LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11;
 THENCE SOUTHERLY ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 270.00 FEET;
 THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 90°14'39" AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING, SAID POINT LYING ON THE WEST RIGHT-OF-WAY LINE OF PICADILLY ROAD;
 THENCE CONTINUING ALONG THE LAST DESCRIBED COURSE A DISTANCE OF 417.70 FEET;
 THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°14'39" AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 945.61 FEET;
 THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 89°45'21" AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 417.70 FEET TO A POINT LYING ON SAID WEST RIGHT-OF-WAY LINE;
 THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°14'39" AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 AND ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 107.09 FEET;
 THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 90°00'00" A DISTANCE OF 30.00 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11;
 THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°00'00" ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 A DISTANCE OF 210.20 FEET;
 THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°00'00" A DISTANCE OF 30.00 FEET TO SAID WEST RIGHT-OF-WAY LINE;
 THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 90°00'00" AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 AND ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 628.32 FEET TO THE POINT OF BEGINNING.

(NOTE: THE ABOVE LEGAL DESCRIPTION BASED ON FIELD SURVEY PERFORMED 01/23/2019. DEFLECTION ANGLES FROM DEED DESCRIPTION REVISED TO CONFORM WITH CURRENT CITY OF AURORA CONTROL NETWORK).

BASIS OF BEARINGS:

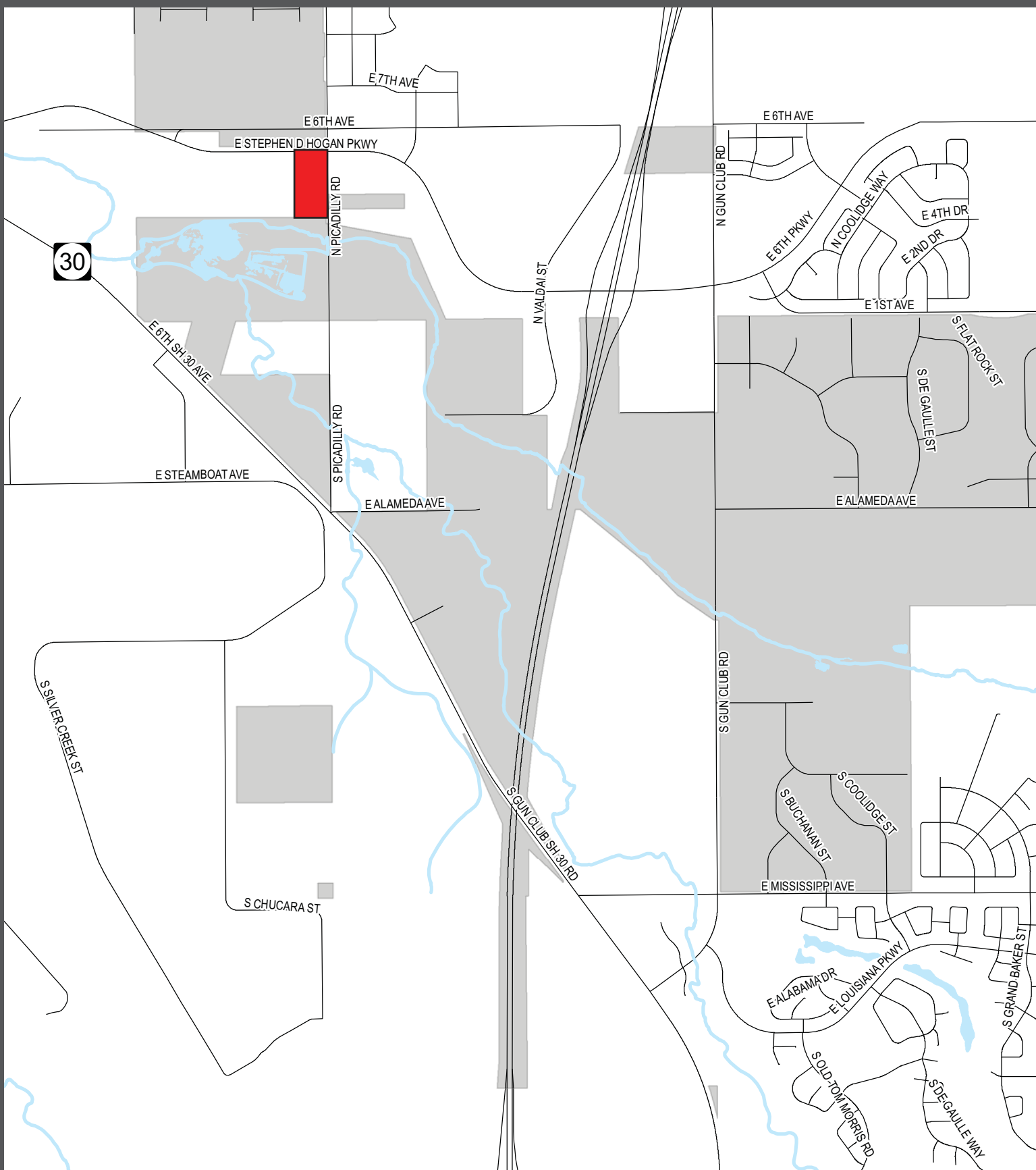
BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, AS SHOWN HEREON, SAID LINE BEARS S 00°31'07"E A DISTANCE OF 2641.43 FEET, PER THE CITY OF AURORA CONTROL NETWORK.

SCALE FACTOR TO BRING CITY OF AURORA GRID COORDINATES TO GROUND COORDINATES = 1.0002596606

MAYOR _____ DATE _____
 CITY CLERK _____ DATE _____
 CITY ENGINEER _____ DATE _____
 CITY ATTORNEY _____ DATE _____

CITY COUNCIL ORDINANCE NO. _____ EFFECTIVE DATE _____

DRAWN BY JVH	Anderson & Hastings Consulting Engineers Inc. 12596 W. Bayaud Ave., Suite 200 Lakewood, Colorado 80228 303-433-8486 DIRECT 720-452-0520 e-mail: jvhastings@shceinc.com	JOB NO. 090-17-2543
APPROVED BY JVH		SHEET NO. 1
DATE 09/25/19		



Planning & Development Services

15151 E. Alameda Pkwy
 Aurora CO 80012 USA
www.auroragov.org
 303-739-7250
GIS@auroragov.org

City of Aurora, Colorado

Colorado Christian Fellowship Annexation

January 9, 2020



Legend

- Lakes
- Creeks
- Colorado Christian Fellowship Annexation
- Other Jurisdiction





**City of Aurora
COUNCIL AGENDA COMMENTARY**

Item #: 13b
 SS: _____
 1st: _____
 2nd: _____

<p>Item Title: Public Hearing and Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, annexing a parcel of land located in the Northeast Quarter of Section 11, Township 4 South, Range 66 West of the Sixth Principal Meridian, Arapahoe County, Colorado. (Colorado Christian Fellowship Annexation 9.2 acres)</p>
<p>Item Initiator: Cox, Jacob - Senior Dev Project Manager - General Management</p>
<p>Staff Source: Cox, Jacob - Senior Dev Project Manager - General Management</p>
<p>City Manager/Deputy City Manager Signature: James Twombly</p>
<p>Outside Speaker:</p>
<p>Council Goal: 2012: 5.0--Be a great place to locate, expand and operate a business and provide for well-planned growth and development</p>

ACTIONS(S) PROPOSED (Check all appropriate actions)

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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.)

A petition for annexation was filed with the City Clerk for annexation of a parcel totaling 9.2 acres. The property is located generally at the southwest corner of Stephen D. Hogan Parkway and Picadilly Road (see Vicinity Map).

City Council made a finding of substantial compliance regarding this annexation on June 1st, 2020.

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

The parcel falls within the City's Annexation Boundary and meets contiguity requirements. There are no proposed development plans at this time in conjunction with this annexation request.

The initial zoning ordinance will be presented to City Council at the next meeting following the Annexation ordinance. Please note that the public hearing for the Initial Zoning will occur on August 3rd, 2020.

The annexation process follows state law, and this annexation will be considered over three City Council meetings. Consideration of this ordinance is part of item #2 listed below:

1. At the June 1, 2020 meeting, City Council approved a Resolution making a finding that the annexation petition is in substantial compliance with statutory requirements. The City also set the hearing date.

2. City Council conducts the Public Hearing, considers approval of a Resolution making a finding that the land is eligible for annexation, and considers Introduction of the Annexation Ordinance.
3. City Council considers the Annexation Ordinance on final reading and the Annexation Agreement will be presented for Council consideration.

QUESTIONS FOR Committee

Does City Council wish to approve this Ordinance?

LEGAL COMMENTS

The City Council has determined that the annexation of lands to the city shall be shown not to create any additional cost or burden on the then-existing residents of the city to provide such public facilities in any newly annexed area. "No annexation shall be accepted until the city council, upon the recommendation of the city manager, determines that the current requirements for such public facilities in the area proposed to be annexed have been fulfilled and that the future requirements for such public facilities can be fulfilled." City Code Section 146-301(B).

Contiguity may be established by annexation of one or more parcels in a series which may be considered simultaneously. (Colo. Rev. Stat. §31-12-104(1)(a)).

A municipality is not legally required to annex area pursuant to landowner's annexation petition, but may impose additional terms and conditions for annexation in accordance with Annexation Act. Superior v. Midcities Co., 933 P.2d 596 (Colo.1997). An annexation agreement based upon the City's model agreement will be presented for approval by motion at the time of final passage of this ordinance.

(Rulla)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

Annexation obligates the City to provide municipal services and utilities upon development. The fiscal impact of this development will be offset by various development fees paid at time of development, as well as future taxes generated by the expected development of commercial uses on this property.

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

Annexation and connection to the City's utility system will permit the property to develop more efficiently than would be possible in Arapahoe County.

EXHIBITS ATTACHED:

1. Colorado Christian Fellowship Annexation Ordinance-3-3.pdf
- 2020 City Annexation Boundary.pdf
- Colorado Christian Fellowship Annexation - Plat Map.pdf
- Colorado Christian Fellowship Annexation - Vicinity Map.pdf

ORDINANCE NO. 2020- ____

A BILL

FOR AN ORDINANCE ANNEXING A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO (Colorado Christian Fellowship) 9.2122 ACRES

WHEREAS, the City Council of the City of Aurora, Colorado, has found a petition for annexation of a certain parcel of land, as described in Exhibit A attached hereto, signed by the owners of one hundred percent of the area to be annexed, to be in substantial compliance with Section 31-12-107(1), Colorado Revised Statutes; and

WHEREAS, after notice pursuant to Section 31-12-108, Colorado Revised Statutes, the City Council has held a public hearing on the proposed annexation to determine if the annexation complies with Sections 31-12-104 and 31-12-105, Colorado Revised Statutes; and

WHEREAS, the City Council has by resolution determined that the requirements of Sections 31-12-104 and 31-12-105, Colorado Revised Statutes, have been met, that an election is not required, and that no additional terms or conditions are to be imposed on the annexed area.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That the annexation of the territory located in the County of Arapahoe, State of Colorado, as described in Exhibit A attached hereto and incorporated herein, to the City of Aurora, Colorado, be and the same is hereby ordained and approved, and said territory is hereby incorporated in and made a part of the City of Aurora, Colorado.

Section 2. That the annexation of such territory to the City of Aurora, Colorado, shall be complete and effective on the effective date of this ordinance, except for the purpose of General Property Taxes, and shall be effective as to General Property Taxes on and after the first day of January 2021.

Section 3. That the Petition for Annexation contained a request that an annexation agreement satisfactory to both petitioners and the City be agreed upon on or before the date of the second reading of this ordinance, and that this ordinance annexing said territory is expressly made subject to the approval of an annexation agreement, as requested.

Section 4. That the City Clerk is authorized and directed to:

- A. File one copy of the annexation map with the original of the annexation ordinance in the office of the City Clerk of the City of Aurora, Colorado;
- B. File three certified copies of the annexation ordinance and map of the area annexed containing a legal description of such area with the County Clerk and Recorder.

Section 5. That 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.

INTRODUCED, READ, AND ORDERED PUBLISHED this ____ day
of _____, 2020.

PASSED AND ORDERED PUBLISHED BY REFERENCE this ____ day
of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:



BRIAN J. RULLA, Assistant City Attorney

Exhibit A
(Legal description of property to be annexed)

A PARCEL OF LAND LYING IN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11;

THENCE SOUTHERLY ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 270.00 FEET;

THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 90°14'39" AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING, SAID POINT LYING ON THE WEST RIGHT-OF-WAY LINE OF PICADILLY ROAD;

THENCE CONTINUING ALONG THE LAST DESCRIBED COURSE A DISTANCE OF 417.70 FEET;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°14'39" AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 945.61 FEET;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 89°45'21" AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 417.70 FEET TO A POINT LYING ON SAID WEST RIGHT-OF-WAY LINE;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°14'39" AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 AND ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 107.09 FEET;

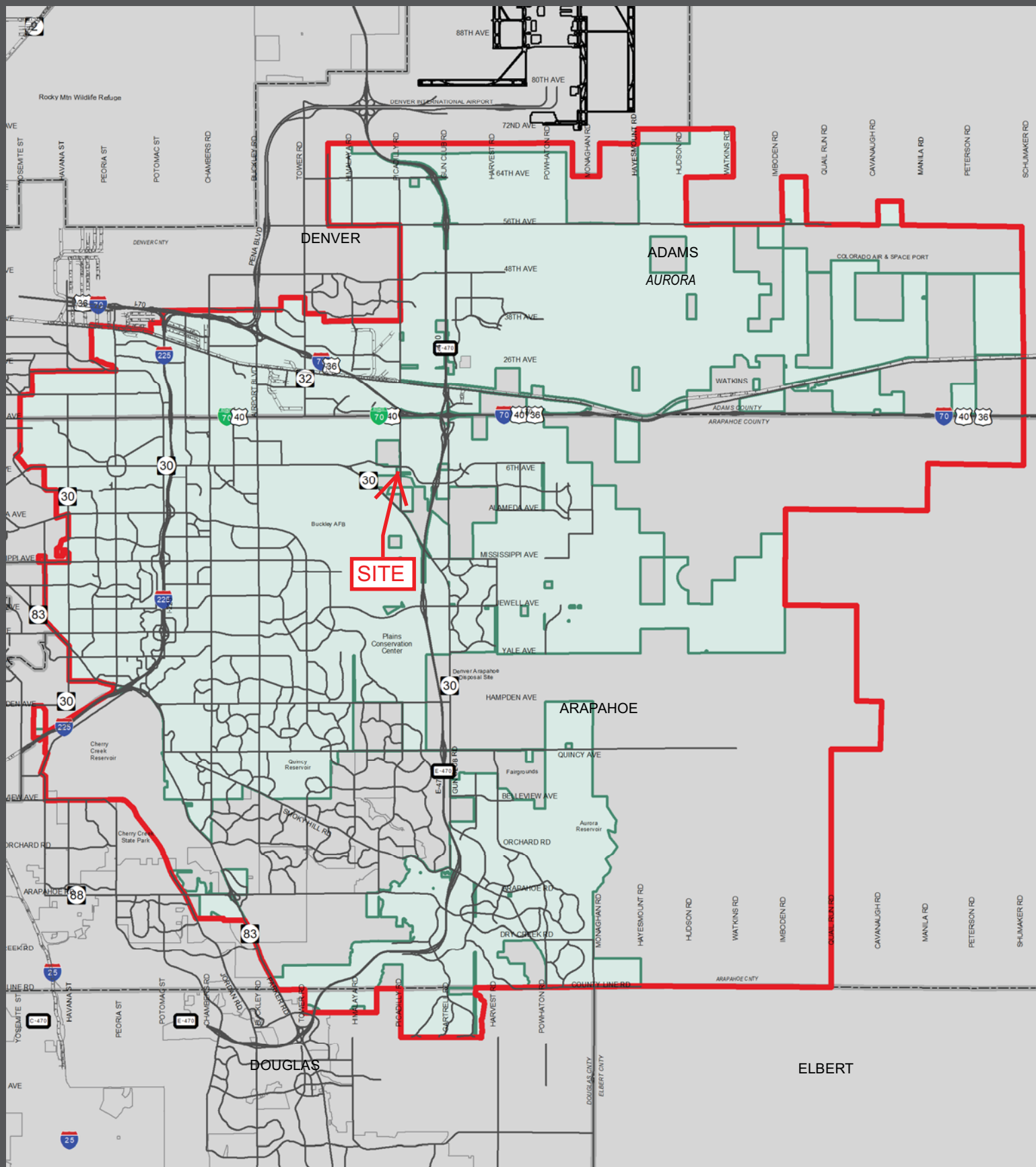
THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 90°00'00" A DISTANCE OF 30.00 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°00'00" ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION SAID SECTION 11 A DISTANCE OF 210.20 FEET;

THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°00'00" A DISTANCE OF 30.00 FEET TO SAID WEST RIGHT-OF-WAY LINE;

THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 90°00'00" AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 AND ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 628.32 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 401,284 SQ. FT. (9.2122 ACRES) MORE OR LESS.



Planning & Development Services

15151 E. Alameda Parkway
 Aurora CO 80012 USA
 AuroraGov.org
 303.739.7250
 GIS@auroragov.org

City of Aurora, Colorado

2020 Annexation Boundary

January 15, 2020

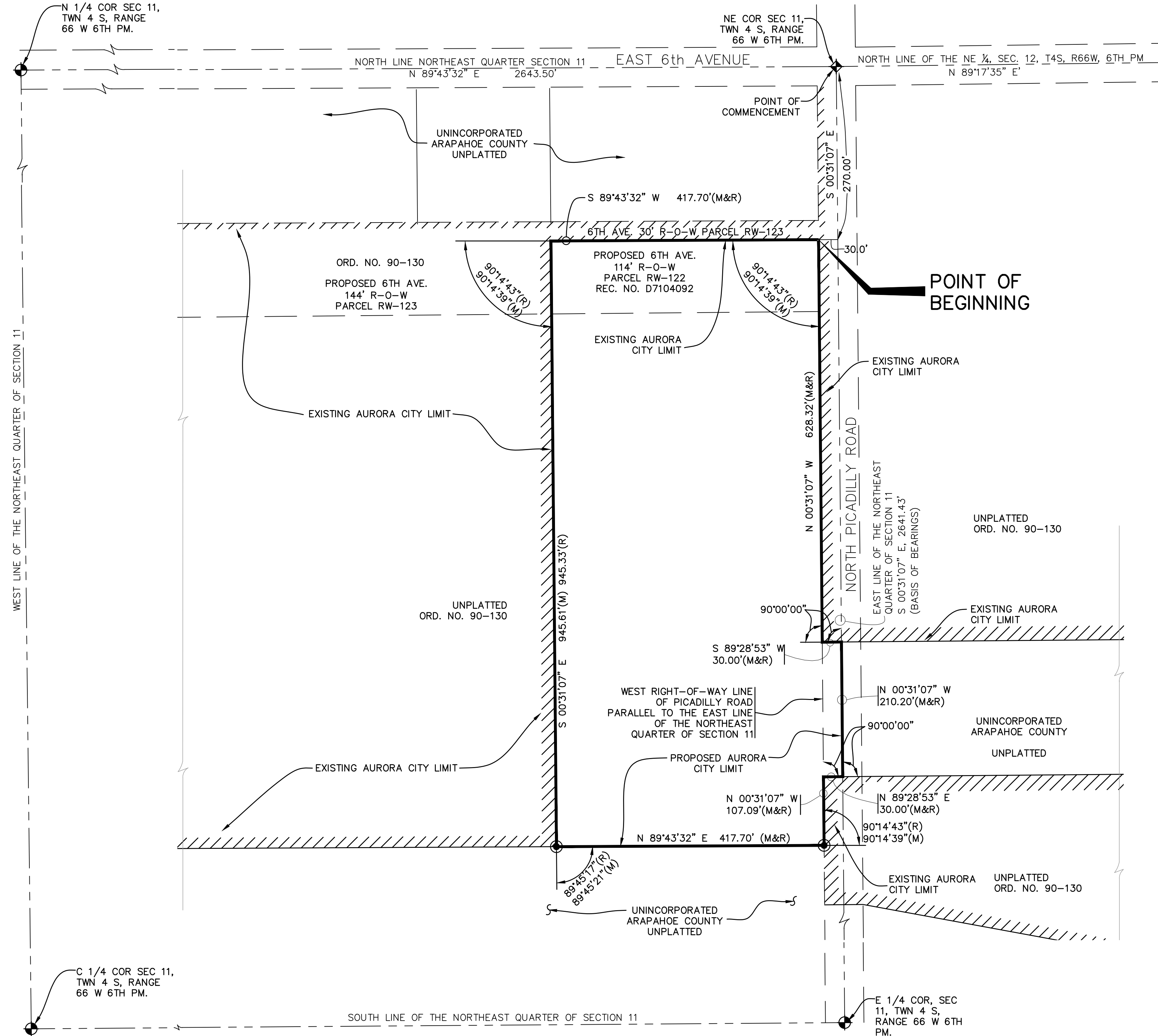


Legend

- Planning Area Boundary
- Aurora
- Other Jurisdictions

ANNEXATION MAP

A PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO



LEGEND

- EXISTING AURORA CITY LIMITS
- PROPOSED AURORA CITY LIMITS
- (M) MEASURED DISTANCE OR ANGLE PER FIELD SURVEY 01/23/2019
- (R) RECORD DISTANCE OR ANGLE PER WARRANTY DEED B8073665
- SECTION LINE
- PROPERTY LINE
- RIGHT-OF-WAY LINE
- ◆ SECTION CORNER
- ⊕ QUARTER SECTION CORNER
- FOUND NO. 5 REBAR WITH CAP LABELED V3 PLS 38145

NOTES:

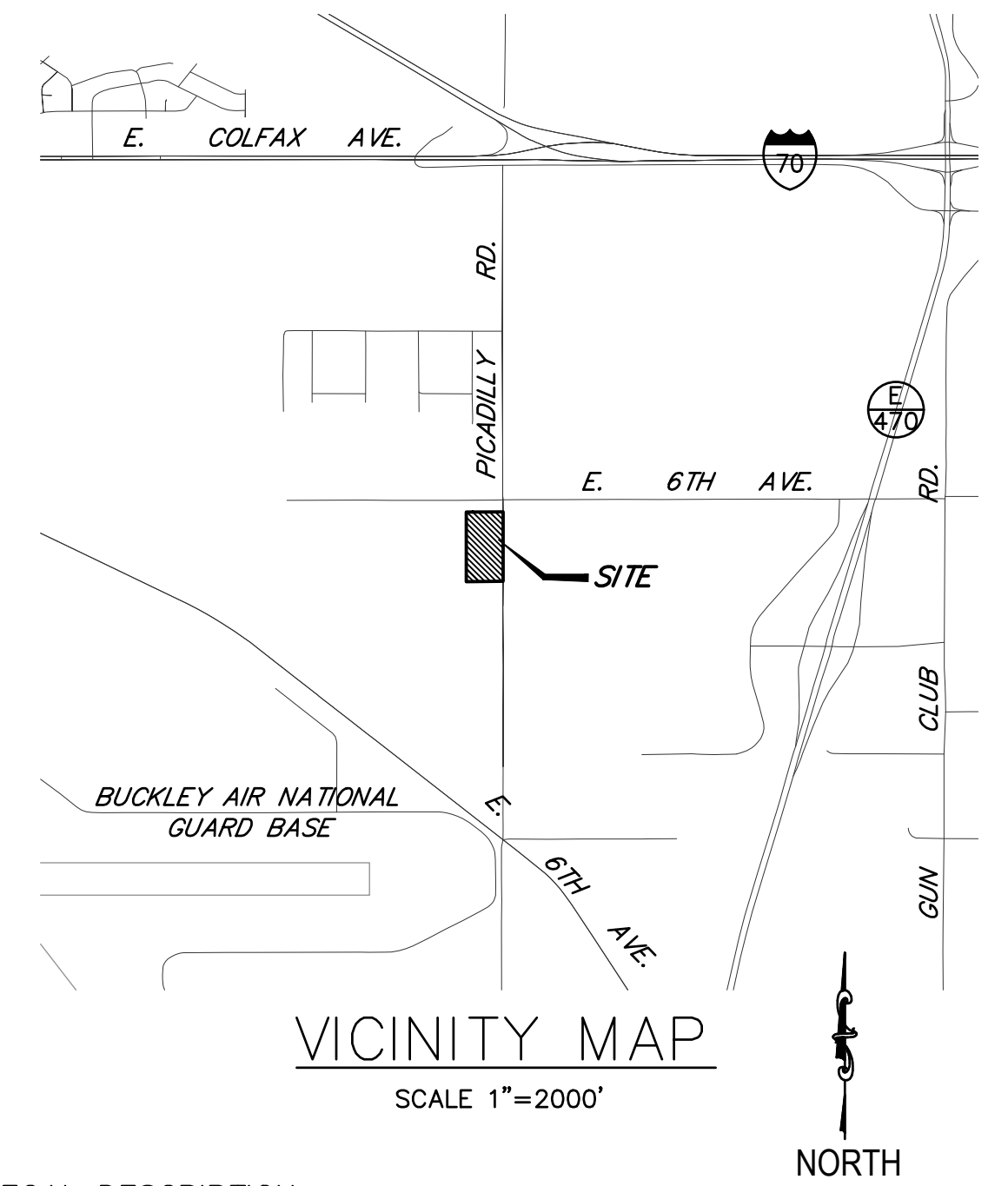
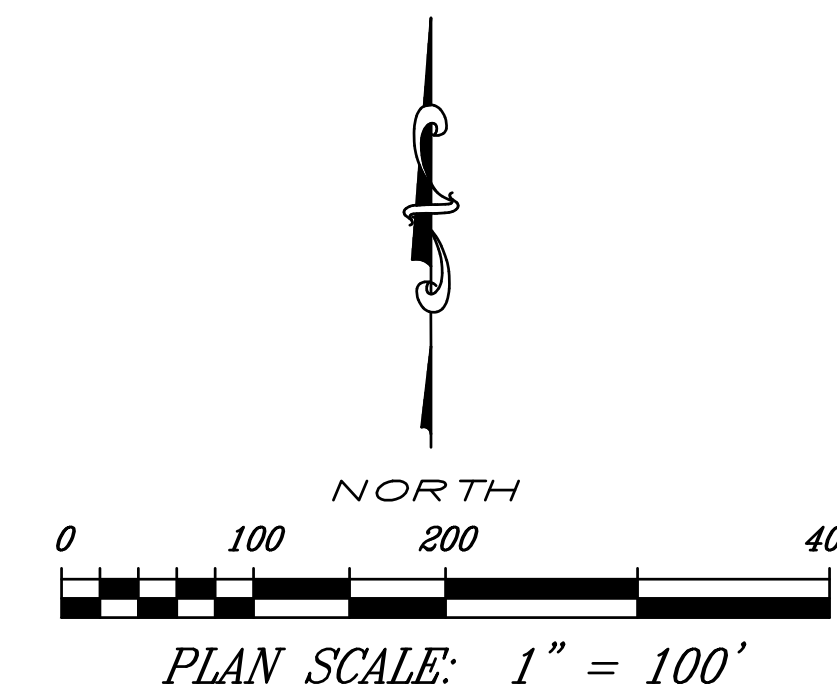
- ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
- ALL DIMENSIONS SHOWN HEREON ARE IN US SURVEY FEET, ALL ANGLES SHOWN HEREON ARE IN DEGREES-MINUTES-SECONDS.

SURVEYOR'S CERTIFICATE

I, JAMES V. HASTINGS, A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF COLORADO DO HEREBY CERTIFY THAT NOT LESS THAN ONE-SIXTH (1/6) OF THE PERIMETER OF THE AREA PROPOSED TO BE ANNEXED TO THE CITY OF AURORA, COLORADO IS CONTIGUOUS WITH THE BOUNDARIES OF THE ANNEXING MUNICIPALITY, AND THAT THIS ANNEXATION PLAT SUBSTANTIALLY COMPLIES WITH THE COLORADO REVISED STATUTES AND THE CITY OF AURORA, COLORADO CODES APPERTAINING THERETO.

JAMES V. HASTINGS P.L.S. #22917

TOTAL PERIMETER	2,786.62 FT
CONTIGUOUS PERIMETER	2,158.72 FT
TOTAL AREA	401,287 SF



LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ARAPAHOE COUNTY, COLORADO MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11;
 THENCE SOUTHERLY ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 270.00 FEET;
 THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 90°14'39" AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING, SAID POINT LYING ON THE WEST RIGHT-OF-WAY LINE OF PICADILLY ROAD;
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 THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 89°45'21" AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 417.70 FEET TO A POINT LYING ON SAID WEST RIGHT-OF-WAY LINE;
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 THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°00'00" ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 A DISTANCE OF 210.20 FEET;
 THENCE ON A DEFLECTION ANGLE TO THE LEFT OF 90°00'00" A DISTANCE OF 30.00 FEET TO SAID WEST RIGHT-OF-WAY LINE;
 THENCE ON A DEFLECTION ANGLE TO THE RIGHT OF 90°00'00" AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11 AND ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 628.32 FEET TO THE POINT OF BEGINNING.

(NOTE: THE ABOVE LEGAL DESCRIPTION BASED ON FIELD SURVEY PERFORMED 01/23/2019. DEFLECTION ANGLES FROM DEED DESCRIPTION REVISED TO CONFORM WITH CURRENT CITY OF AURORA CONTROL NETWORK).

BASIS OF BEARINGS:

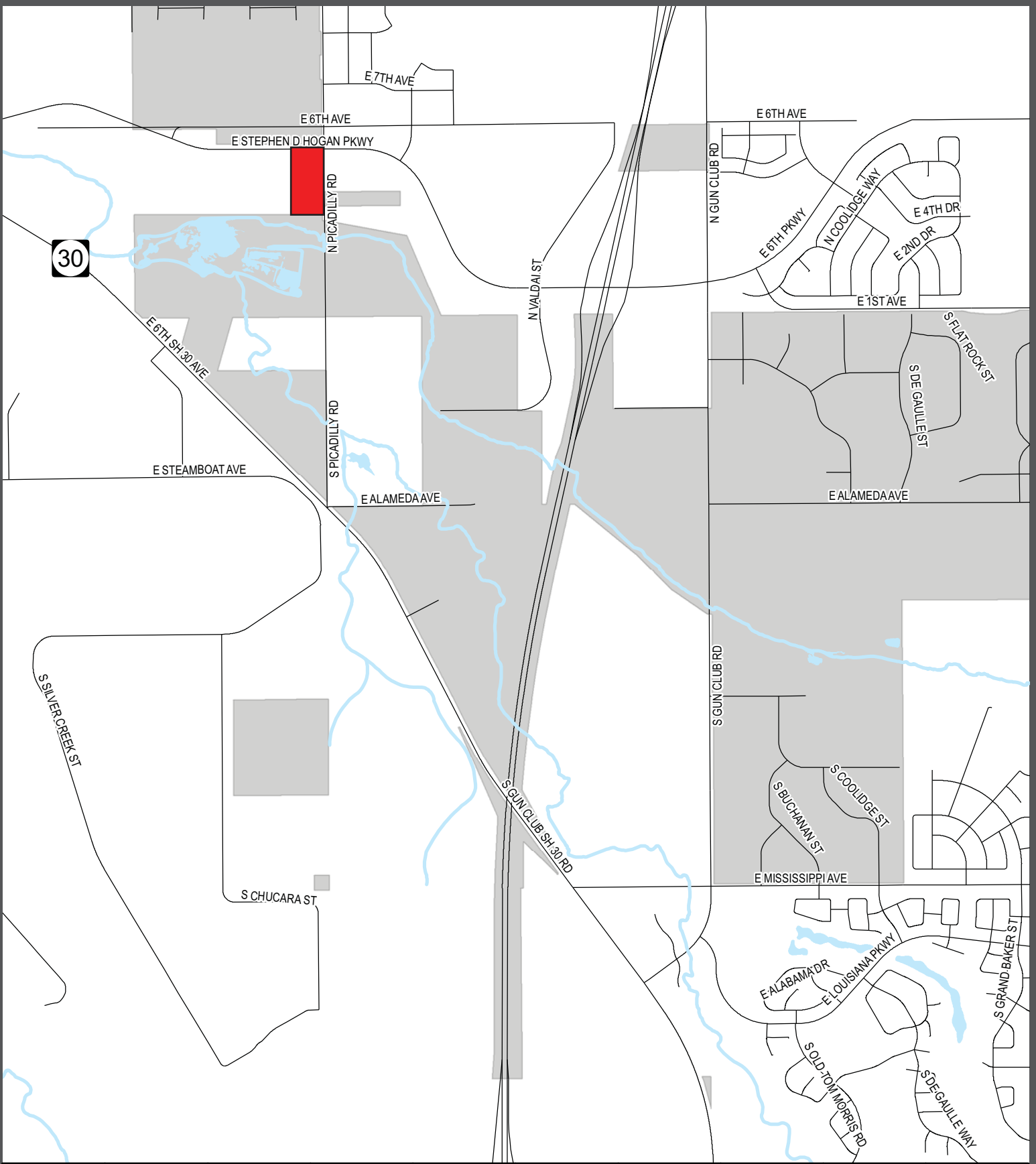
BEARINGS ARE BASED ON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, AS SHOWN HEREON, SAID LINE BEARS S 00°31'07"E A DISTANCE OF 2641.43 FEET, PER THE CITY OF AURORA CONTROL NETWORK.

SCALE FACTOR TO BRING CITY OF AURORA GRID COORDINATES TO GROUND COORDINATES = 1.0002596606

MAYOR _____ DATE _____
 CITY CLERK _____ DATE _____
 CITY ENGINEER _____ DATE _____
 CITY ATTORNEY _____ DATE _____

CITY COUNCIL ORDINANCE NO. _____ EFFECTIVE DATE _____

DRAWN BY JVH	Anderson & Hastings Consulting Engineers Inc. 12596 W. Bayaud Ave., Suite 200 Lakewood, Colorado 80228 303-433-8486 DIRECT 720-452-0520 e-mail: jvhastings@ahceinc.com	JOB NO. 090-17-2543
APPROVED BY JVH		SHEET NO. 1
DATE 09/25/19	July 20, 2020 Council Meeting, Page 305	



Planning & Development Services

15151 E. Alameda Pkwy
 Aurora CO 80012 USA
www.auroragov.org
 303-739-7250
GIS@auroragov.org

City of Aurora, Colorado

Colorado Christian Fellowship Annexation

January 9, 2020



Legend

- Lakes
- Creeks
- Colorado Christian Fellowship Annexation
- Other Jurisdiction

Feet
 0 875 1,750

July 20, 2020 Council Meeting, Page 306



City of Aurora

COUNCIL AGENDA COMMENTARY

Item #: 13c
SS: _____
1st: _____
2nd: _____

Item Title:

Consideration of AN ORDINANCE FOR INTRODUCTION of the City Council of the City of Aurora, Colorado, finding and determining that certain real property located in an Unincorporated area of Arapahoe County is an enclave under applicable law; making certain other findings in accordance with the "Municipal Annexation Act of 1965"; and annexing certain parcels of land located in the East half of the East half of Section 8, Township 4 South, Range 65 West of the 6th principal meridian, County of Arapahoe, State of Colorado. (XCEL ADONEA) 25.651 ACRES.

Item Initiator: Cox, Jacob - Senior Dev Project Manager - General Management

Staff Source: Cox, Jacob - Senior Dev Project Manager - General Management

City Manager/Deputy City Manager Signature: James Twombly

Outside Speaker:

Council Goal: 2012: 5.0--Be a great place to locate, expand and operate a business and provide for well-planned growth and development

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

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.)*

At the request of and in coordination with the current landowner (Xcel Energy) and the adjacent developer of Adonea (Oakwood Homes), the City has initiated this Enclave Annexation for the purposes of bringing a parcel inclusive of Rights-Of-Way into the City of Aurora's jurisdiction. The purpose being ease of coordination for utility and roadway work within this parcel with a single municipality.

The property is located generally at the northwest corner of Alameda Avenue and Powhaton Road extending north to 6th Avenue along the Powhaton ROW (see Vicinity Map).

The Enclave process per state statute allows for unincorporated area that has been entirely contained within the boundaries of a municipality for at least three years, to be annexed by the municipality by ordinance. Due to this, there is no Petition with the Enclave process. Additionally, there will not be an annexation agreement due to the current land owner being a public utility and the City's interest in annexing this parcel for coordination of utility and roadway infrastructure.

The City has published notice of annexation ordinance for four consecutive weeks with the first publication being 30 days prior to Council's consideration of the annexation ordinance. Additionally, the City has mailed copies of the impact report and notice to the pertinent County representatives and special districts.

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

The parcel falls within the City's Annexation Boundary and meets contiguity requirements. The annexation will streamline infrastructure and roadway connections to Powhatan ROW from the Adonea development.

The initial zoning ordinance will be presented to City Council following the Annexation Ordinance and heard separately due to the enclave process of establishing jurisdiction with this particular annexation. The Initial Zoning will follow the City's Comprehensive Plan and be consistent with adjacent residential zoning. This annexation parcel consists of utility easements and rights-of-way.

The annexation process follows state law, and this enclave annexation ordinance will be considered over two City Council meetings:

1. City Council considers Introduction of the Annexation Ordinance.
2. City Council considers the Annexation Ordinance on final reading.

QUESTIONS FOR Committee

Does City Council wish to approve this Ordinance?

LEGAL COMMENTS

The City Council has determined that the annexation of lands to the city shall be shown not to create any additional cost or burden on the then-existing residents of the city to provide such public facilities in any newly annexed area. "No annexation shall be accepted until the city council, upon the recommendation of the city manager, determines that the current requirements for such public facilities in the area proposed to be annexed have been fulfilled and that the future requirements for such public facilities can be fulfilled." City Code Section 146-301(B).

Section 31-12-106(1), C.R.S. provides that a municipality may annex an enclave by ordinance in accordance the Colorado Constitution if said area has been surrounded by the city for not less than three years.

(Rulla)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

Annexation obligates the City to provide municipal services and utilities.

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

Annexation and connection to the City's utility system will permit the property to develop more efficiently than would be possible in Arapahoe County.

EXHIBITS ATTACHED:

- XCEL Adonea Annexation Ordinance.pdf
- XCEL Adonea Annexation Plat Map.pdf
- XCEL Adonea Annexation Vicinity Map.pdf
- 2020 City Annexation Boundary.pdf

ORDINANCE NO. 2020- _____

A BILL

FOR AN ORDINANCE FINDING AND DETERMINING THAT CERTAIN REAL PROPERTY LOCATED IN AN UNINCORPORATED AREA OF ARAPAHOE COUNTY IS AN ENCLAVE UNDER APPLICABLE LAW; MAKING CERTAIN OTHER FINDINGS IN ACCORDANCE WITH THE "MUNICIPAL ANNEXATION ACT OF 1965"; AND ANNEXING CERTAINS PARCELS OF LAND LOCATED IN THE EAST HALF OF THE EAST HALF OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO. (XCEL ADONEA) 25.651 ACRES.

WHEREAS, Article II, Section 30 of the Colorado Constitution provides that an area which is "entirely surrounded" by an annexing municipality may be annexed by such municipality; and

WHEREAS, Section 31-12-106(1), C.R.S. (which is part of the Municipal Annexation Act of 1965), provides that a municipality may annex an enclave by ordinance in accordance with Section 30(1)(c) of Article II of the Colorado Constitution without complying with Sections 31-12-104, 31-12-105, 31-12-108 and 31-12-109, C.R.S., if said area has been so surrounded for a period of not less than three (3) years; and

WHEREAS, the City Council has determined that the requirements of Section 31-12-106(1), Colorado Revised Statutes have been met and that no annexation proceedings have been commenced for the annexation of part or all of the area to be annexed by another municipality.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That the real property described in Exhibit A, attached hereto and incorporated herein, is currently located in an unincorporated area of Arapahoe County, Colorado and is an "enclave" as defined by Colorado law in that it is entirely contained within the outer boundaries of the City of Aurora. The enclave described in Exhibit A of this ordinance has been surrounded by (i.e., entirely contained within) the boundaries of the City of Aurora for not less than three (3) years within the meaning of Article II, Section 30 of the Colorado Constitution.

Section 2. That no part of the municipal boundary or territory surrounding the real property described in Exhibit A of this ordinance consists of public rights-of-way, including streets and alleys, that are not immediately adjacent to the municipality on the side of the right-of-way opposite the enclave and no part of the territory surrounding the enclave was annexed to the City of Aurora since December 19, 1980 without compliance with Article II, Section 30 of the Colorado Constitution.

Section 3. That the enclave annexed to the City by this ordinance does not: (i) have a population of that exceeds one hundred persons; and (ii) contain more than fifty acres.

Section 4. That notice of the proposed annexation of the hereafter described real property has been published as required by Sections 31-12-106(1) and 31-12-108(2), C.R.S.

Section 5. That the annexation of the territory described in Exhibit A to the City of Aurora, Colorado, be and the same is hereby ordained and approved, and said territory is hereby incorporated in and made a part of the City of Aurora, Colorado.

Section 6. That the annexation of such territory to the City of Aurora, Colorado, shall be complete and effective on the effective date of this ordinance, except for the purpose of General Property Taxes, and shall be effective as to General Property Taxes on and after the first day of January 2021.

Section 7. That the City Clerk is authorized and directed to:

A. File one copy of the annexation map with the original of the annexation ordinance in the office of the City Clerk of the City of Aurora, Colorado;

B. File three certified copies of the annexation ordinance and map of the area annexed containing a legal description of such area with the County Clerk and Recorder.

Section 9. That 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.

INTRODUCED, READ, AND ORDERED PUBLISHED this ____ day of _____, 2020.

PASSED AND ORDERED PUBLISHED BY REFERENCE this ____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:

 cmck

BRIAN J. RULLA, Assistant City Attorney

Exhibit A
(Legal description of property to be annexed)

TWO PARCELS OF LAND DESCRIBED IN BOOK 1234 AT PAGES 263 AND 266 IN THE RECORDS OF THE ARAPAHOE COUNTY CLERK AND RECORDER, SAID PARCELS BEING LOCATED IN THE EAST HALF OF THE EAST HALF OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO. SAID PARCELS BEING THE EAST 210.00 FEET OF SAID SECTION 8, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 8, BEING MONUMENTED AS DEPICTED HEREON, SAID POINT OF BEGINNING BEING THE NORTHEAST CORNER OF THE ANNEXATION PARCEL HEREIN DESCRIBED.

THENCE THE FOLLOWING SIX (6) COURSES;

1. SOUTH 00°22'06" EAST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 8 A DISTANCE OF 2660.27 FEET EAST QUARTER CORNER THEREOF;
2. SOUTH 00°21'24" EAST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 8 A DISTANCE OF 2660.38 FEET TO THE SOUTHEAST CORNER THEREOF, SAID POINT BEING THE SOUTHEAST CORNER OF THE ANNEXATION PARCEL HEREIN DESCRIBED
3. SOUTH 89°37'09" WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 8 A DISTANCE OF 210.00 FEET TO THE SOUTHWEST CORNER OF THE ANNEXATION PARCEL HEREIN DESCRIBED;
4. NORTH 00°21'24" WEST A DISTANCE OF 2660.68 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 8, SAID POINT ALSO BEING ON THE EAST LINE OF FILING 7 OF THE ADONEA SUBDIVISION, AS RECORDED IN THE RECORDS OF THE ARAPAHOE COUNTY CLERK AND RECORDER AT RECEPTION NUMBER D7122266;
5. NORTH 00°22'06" EAST ALONG THE EAST LINE OF SAID SUBDIVISION AND AN EXTENSION THEREOF A DISTANCE OF 2660.15 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 8, SAID POINT BEING THE NORTHWEST CORNER OF THE ANNEXATION PARCEL HEREIN DESCRIBED;
6. NORTH 89°40'03" EAST ALONG SAID NORTH LINE A DISTANCE OF 210.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING A CALCULATED AREA OF 1,117,355 SQUARE FEET OR 25.651 ACRES, MORE OR LESS AND BEING SUBJECT TO ANY EXISTING EASEMENTS AND/OR RIGHTS OF WAY OF WHATSOEVER NATURE

ANNEXATION MAP

PARCELS OF LAND LOCATED IN THE EAST HALF OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN,
COUNTY OF ARAPAHOE, STATE OF COLORADO
SHEET 1 OF 1

ANNEXATION DESCRIPTION

TWO PARCELS OF LAND DESCRIBED IN BOOK 1234 AT PAGES 263 AND 266 IN THE RECORDS OF THE ARAPAHOE COUNTY CLERK AND RECORDER, SAID PARCELS BEING LOCATED IN THE EAST HALF OF THE EAST HALF OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF ARAPAHOE, STATE OF COLORADO. SAID PARCELS BEING THE EAST 210.00 FEET OF SAID SECTION 8, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

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- SAID PARCEL CONTAINING A CALCULATED AREA OF 1,117,355 SQUARE FEET OR 25.651 ACRES, MORE OR LESS AND BEING SUBJECT TO ANY EXISTING EASEMENTS AND/OR RIGHTS OF WAY OF WHATSOEVER NATURE.

CONTIGUITY TABLE

TOTAL PERIMETER OF PARCEL = 11,061.48 FEET

CONTIGUOUS PERIMETER = 11,061.48 FEET

PERCENT CONTIGUOUS PERIMETER = 100.00%

(STATE LAW REQUIRES A MINIMUM 1/6 OR 16.67% CONTIGUITY WITH EXISTING CITY LIMIT)

TOTAL AREA OF PARCEL = 25.651 ACRES, MORE OR LESS



VICINITY MAP
SCALE: 1" = 2000'

NOTES

THIS MAP IS PREPARED EXCLUSIVELY FOR ANNEXATION PURPOSES ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE AND SHOULD NOT BE CONSTRUED AS A BOUNDARY SURVEY.

THE LINEAL UNIT USED IN THE PREPARATION OF THIS ANNEXATION PLAT IS THE U.S. SURVEY FOOT AS DEFINED BY THE UNITED STATES DEPARTMENT OF COMMERCE, NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF CERTIFICATION SHOWN HEREON.

OWNERSHIP INFORMATION, AS SHOWN HEREON, WAS OBTAINED FROM THE ARAPAHOE COUNTY ASSESSOR'S OFFICE.

BASIS OF BEARINGS

BEARINGS SHOWN ON THIS PLAT ARE BASED UPON THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 4 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN BEING ASSUMED TO BEAR SOUTH 00°22'06" EAST, 2660.27 FEET, MONUMENTED AS SHOWN HEREON.

SURVEYOR'S CERTIFICATION

I PATRICK M. STEENBURG, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO DO HEREBY CERTIFY THAT NOT LESS THAN ONE-SIXTH (1/6) OF THE PERIMETER OF THE AREA PROPOSED TO BE ANNEXED TO THE CITY OF AURORA, COLORADO, IS CONTIGUOUS WITH THE BOUNDARIES OF THE ANNEXING MUNICIPALITY, AND THAT THIS ANNEXATION PLAT SUBSTANTIALLY COMPLIES WITH THE COLORADO REVISED STATUTES AND THE CITY OF AURORA, COLORADO CODES APPERTAINING THERETO.

PATRICK M. STEENBURG, PLS NO. 38004
FOR AND ON BEHALF OF CVL CONSULTANTS OF COLORADO, INC.

CITY OF AURORA APPROVALS

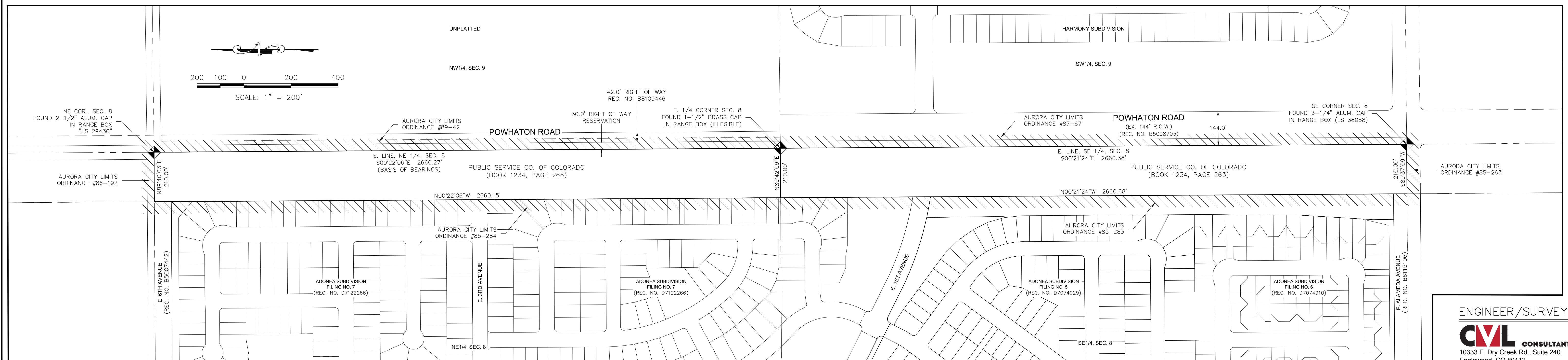
MAYOR _____ DATE _____

CITY CLERK _____ DATE _____

CITY ENGINEER _____ DATE _____

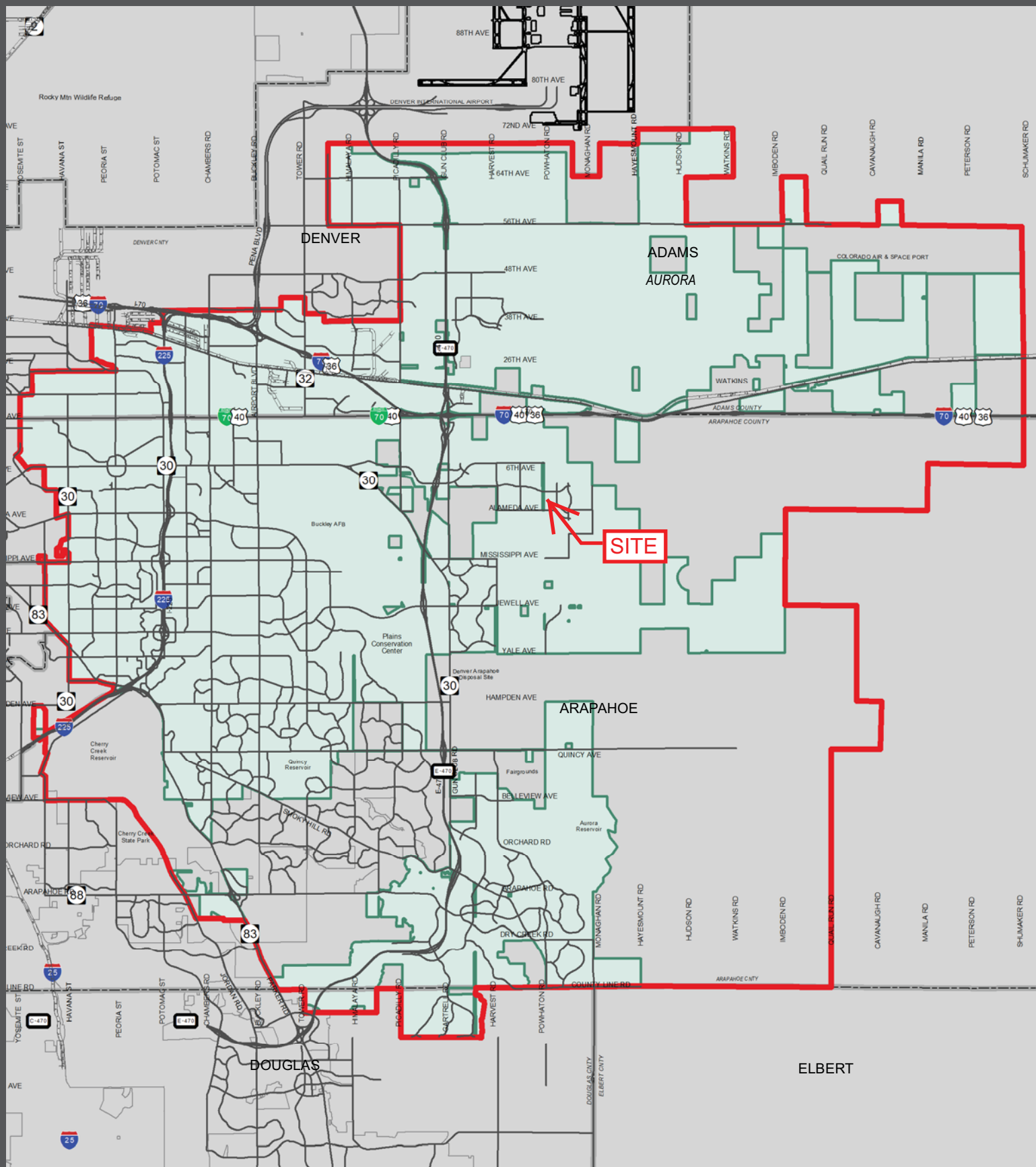
CITY ATTORNEY _____ DATE _____

CITY COUNCIL ORDINANCE NO. _____ EFFECTIVE DATE _____



ENGINEER/SURVEYOR

CVL CONSULTANTS
10333 E. Dry Creek Rd., Suite 240
Englewood, CO 80112
Tel: (720) 482-9526 / Fax: (720) 482-9546



Planning & Development Services

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 Aurora CO 80012 USA
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 GIS@auroragov.org

City of Aurora, Colorado

2020 Annexation Boundary

January 15, 2020



Legend

- Planning Area Boundary
- Aurora
- Other Jurisdictions

Miles 0 1 2

RESOLUTION NO. R 2020-_____

A RESOLUTION BY THE CITY COUNCIL OF AURORA, COLORADO, TO
SUSPEND CERTAIN COUNCIL RULES

WHEREAS, on March 13, 2020, the City of Aurora declared a local state of emergency due to the outbreak of COVID-19; and

WHEREAS, the City of Aurora City Manager declared a local state of disaster on March 18, 2020; and

WHEREAS, this public health incident has required a change in operations and policy for the City of Aurora; and

WHEREAS, pursuant to Article III, Section 8 of the City Charter, the City Council promulgates Rules of Order and Procedure to govern the conduct of its meetings; and

WHEREAS, the City Council wishes to continue to conduct its business for the City of Aurora in a manner that promotes the health, safety, and wellbeing of its members and the citizens of the City of Aurora and minimize the spread of COVID-19; and

WHEREAS, the City Council wishes to have the option, during this public health incident, to conduct meetings via teleconference for City Council meetings and the meetings of the policy committees and certain boards and commissions; and

WHEREAS, the City Council has determined that certain of its Rules of Order and Procedure should be suspended to facilitate the conduct of business in a safe manner that promotes the health of citizens of the City of Aurora.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. As set forth in this resolution, the City may hold all meetings of the City Council (executive session, study session, and formal Council meetings), Council policy committee, Civil Service Commission, Planning & Zoning Commission, and Board of Adjustments and Appeals via teleconference or other similar digital conferencing tool.

Section 2. To that end, any rules contained in the Rules of Order and Procedure for the City Council related to the following matters are hereby suspended:

- All rules governing the location of meetings
- All rules requiring in-person attendance at meetings
- All rules that would, in any way, prohibit electronic or remote attendance or participation, consistent with all other Rules, by Council, committee, commission, or board members

- All rules mandating a specific order of business
- All rules that would in any way prohibit electronic or remote attendance and comment by the public through a process to be determined by the City Clerk

Section 3. These rules shall remain suspended up to and including the regularly scheduled City Council meeting on May 4, 2020. Thereafter, the City Council may vote to extend the period of suspension or to terminate the suspension as deemed necessary based on the emergency conditions present on that date.

Section 4. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this _____ day of _____, 2020.

MIKE COFFMAN, Mayor

ATTEST:

STEPHEN RUGER, City Clerk

APPROVED AS TO FORM: _____

 
Isabelle Evans, Assistant City Attorney



**City of Aurora
Council Agenda Commentary**

Item #: 15a
 SS: 7/6/20
 1st: _____
 2nd: _____

Item Title: Consideration of the reappointment of five (5) youth members and the appointment of two (2) new youth members to the Aurora Youth Commission.
Item Initiator: Dahl, Barbara - City Clerk Analyst - General Management
Staff Source: Ruger, Stephen - City Clerk - General Management
City Manager/Deputy City Manager Signature: James Twombly
Outside Speaker:
Council Goal: 2012: 1.2--Develop neighborhood and community relationships

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

- Approve Item as proposed at Study Session
- Approve Item with Waiver of Reconsideration
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Information Only

PREVIOUS ACTIONS OR REVIEWS:

Board / Commission

Name: Aurora Youth Commission

Meeting Date:

Actions Taken: Recommends Do Not Recommend

- Minutes Attached
- Minutes Not Available
- Forwarded without Recommendation
- Recommendation Report 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 commission currently has nine vacant youth seats, and two vacant adult seats. The Aurora Youth Commission respectfully suggests;

- Ms. Mitali Desai**
 - Ms. Madison Dragon**
 - Ms. Angela Guardado**
 - Ms. Jamie Nichols**
 - Ms. Josephine Stockton**
- to serve as the youth appointment; and

Ms. Marabella Bettinelli

Ms. Rediet Moges

to serve as the new youth appointments

If appointed, they would all serve until July 31, 2022. A copy of the memorandum from the Commission and their applications are included with this commentary.

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

The Aurora Youth Commission is comprised of twenty-two members, all of whom can serve four consecutive two-year terms. Sixteen members shall be between the ages of fourteen and twenty and six members shall be 21 years of age or older. Adult members must be Aurora residents. Youth members must be an Aurora resident or attend a school in Aurora. Members shall represent school districts, private schools, and home school participation to the extent possible.

Current members of the Aurora Youth Commission, including their wards and term ending dates, are:

Josue Estrada	Ward I	7/2021
Vinay Malik	Ward VI	7/2021
Kevin Duncan	Ward IV	7/2021
Natalie Perez	Ward I	7/2021
Mitali Desai	Ward VI	Pending
Angela Guardado	Ward II	Pending
Jhostin Perez-Coronado	Ward II	7/2021
Josephine Stockton	Ward V	Pending
Madison Dragon	Ward VI	Pending
Jamie Nichols	Ward II	Pending
Kristina Lance	Ward II	7/2021
Joseph Soto	Ward III	7/2021
Manar Jellani	Ward n/a	7/2021
Dhruv Shrivastava	Ward n/a	7/2021
Caleb Weiss	Ward VI	7/2021
Advik Shrivastava	Ward n/a	7/2022

QUESTIONS FOR COUNCIL

Does the City Council wish to move the appointment to the formal agenda?

LEGAL COMMENTS

The city council recognizes that Aurora youth are important residents of the community. Pursuant to the authority vested in this Code, an Aurora Youth Commission is hereby created for the purpose of advising council, the city manager, and the director of the department of library and recreation services regarding the interests of the youth in Aurora. (Section 2-900 of the City Code) (Lathers) The city council shall appoint the members of the Aurora Youth Commission. The commission shall consist of 22 voting members 16 of which shall be between the ages of 14 years through 20 years old,

and six members shall be adults of an age of 21years and over. To the extent possible through the nomination process the composition of the commission shall represent school districts, private schools, and home school participation. (Section 2-902 of the City Code, paraphrased) (Lathers)

PUBLIC FINANCIAL IMPACT (If Yes, EXPLAIN)

Yes No

No

PRIVATE FISCAL IMPACT (If Significant or Nominal, EXPLAIN)

Not Applicable Significant Nominal

n/a

EXHIBITS ATTACHED:

MEMO AYC_06.10.20.pdf



MEMORANDUM

TO: Mayor Mike Coffman
Members of City Council

THROUGH: Stephen Ruger, City Clerk
Brooke Bell, Director, Parks, Recreation and Open Space Department
Joe Sack, Manager of Recreation

FROM: Jenna Katsaros, Superintendent of Youth Development

DATE: June 16, 2020

SUBJECT: Aurora Youth Commission Applicants

The purpose of the Aurora Youth Commission (AYC) is to advise City Council, the City Manager and the Director of the Parks, Recreation and Open Space Department regarding the interests of youth in Aurora.

The AYC is made up of 22 members; 16 members are between 14-20 years of age and 6 members must be 21 years of age or older. The Commission follows the traditional school year calendar and meets August through May, with terms ending in July.

As of July 31, 2020, the Commission will have nine (9) vacant youth seats, and two (2) adult vacancies. The Commission held interviews in June.

Youth Applicants

Marbella Bettinelli, Ward I – Ms. Bettinelli will be a senior at Vanguard Classical School East Campus. She works at a local Catholic church as the Religious Education Assistant and wants to become more involved in her community. Ms. Bettinelli is respectfully suggested for an immediate appointment.

Mitali Desai, Ward VI – Ms. Desai is entering her senior year at Cherokee Trail High School. She has participated in leadership of the Commission, previously serving as Treasurer, and also serves on the Colorado Youth Advisory Council. Ms. Desai is respectfully suggested for re-appointment.

Madison Dragon, Ward VI – Ms. Dragon is entering her junior year at Cherokee Trail High School. She joined the Commission as a freshman and has regularly participated in outreach events and community projects. Ms. Dragon brings a positive attitude to every meeting, and she is respectfully suggested for re-appointment.

Angela Guardado, Ward II – Ms. Guardado serves as current Chair of the Aurora Youth Commission. She is working towards her Associates Degree from Colorado Early Colleges. Ms. Guardado has also served as an intern at Teen Court in Aurora and is on the National Honor Society. She is respectfully suggested for re-appointment.

Rediet Moges, Ward V – Ms. Moges will be a junior at William Smith High School. She is passionate about issues impacting minority youth, having experienced discrimination and micro aggression in her own life. She would also like to bring awareness to mental health issues impacting young people. Ms. Moges is respectfully suggested for an immediate appointment.

Jamie Nichols, Ward II – Ms. Nichols will be a junior at Chesterton Academy of Our Lady of Victory. She currently serves as the Treasurer of the Commission. Ms. Nichols actively participated in DRCOG's Teen Advisory Council last school year and is always ready to help lead a project. Ms. Nichols is respectfully suggested for re-appointment.

Josephine Stockton, Ward II – Ms. Stockton is entering her junior year at Stanford Online High School. She created and operates two businesses on Etsy and is working towards a third venture. Ms. Stockton previously worked as a lifeguard at Central Recreation Center and regularly contributes to various sub-committees developed by the Commission. Ms. Stockton is respectfully suggested for re-appointment.

In conclusion, the Aurora Youth Commission respectfully suggests the re-appointments of five (5) youth members: Mitali Desai, Madison Dragon, Angela Guardado, Jamie Nichols, and Josephine Stockton, as well as the appointment of two (2) new youth members: Marbella Bettinelli and Rediet Moges.

The Commission continues to recruit to fill the remaining youth and adult vacancies.